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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

October 22, 2013
9:36 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
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17 REED M. BRODSKY
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BY: JULIO C. GOMEZ

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(Pages 705-707 SEALED by order of the Court)

(In open court; trial resumed)

THE COURT: Good morning, all.

Mr. Callejas, you are still under oath.

Mr. Friedman, you may continue.

MS. FRIEDMAN: Thank you, your Honor.

ADOLFO CALLEJAS RIBADENEIRA, resumed.

CROSS-EXAMINATION (cont'd)

BY MS. FRIEDMAN:

Q. Mr. Callejas, in your declaration you state that you have been responsible for managing the day-to-day activity of the Chevron's defense of the Lago Agrio litigation since the beginning of the case.

Generally speaking, what does that mean you have done?

A. It means that I have handled all the matters, all the defense matters of the company in coordination with my client.

Q. How many lawyers in your firm, how many lawyers were there in your law firm during the 2009, 2010 time period?

A. Five of us were there working on the Chevron case.

Q. Were there other lawyers in your firm that were not working on the Chevron case?

A. Yes, there were some.

Q. Approximately how many?

A. Four or five additional ones.

Q. Were you responsible for managing or supervising other

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1 Ecuadorian lawyers working on this case?

2 A. Yes, it was.

3 Q. Approximately how many?

4 A. The four additional ones that I mentioned to you were under
5 my supervision.

6 Q. Were those four in your law firm or outside of your law
7 firm?

8 A. They were lawyers that worked under the Callejas y
9 Asociados law firm.

10 Q. Were you responsible for managing or supervising any
11 nonlawyer personnel who worked on the Chevron case?

12 A. Yes.

13 Q. Can you describe for me the categories of personnel you
14 were responsible for managing or supervising?

15 A. Basically the personnel that in the United States would be
16 called paralegals, also secretaries and lower rank assistants.

17 THE COURT: Mr. Friedman, let's pause for a minute.

18 (Pause)

19 THE COURT: Let's proceed.

20 THE WITNESS: Would it be possible for me to hear the
21 last part of my answer to see if I can completely answered the
22 question.

23 (Record read)

24 THE WITNESS: I wish to add that there was other
25 personnel whose work was logistical in nature that I

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1 supervised.

2 Q. What type of logistical personnel?

3 A. Logistics personnel who were in charge of the logistics of
4 our working in Quito, as well as Lago Agrio, and who would
5 coordinate time scheduling, lodging, air travel, that sort of
6 thing.

7 Q. Did any investigators report to you?

8 A. No, no investigator has ever reported to me.

9 Q. Did you work with expert witnesses nominated or put forth
10 by Chevron?

11 MR. MASTRO: Objection to form, your Honor, and it's
12 vague.

13 THE COURT: Overruled.

14 A. I'm sorry, could you clarify what you meant by witness,
15 which was the translation that I heard.

16 MS. FRIEDMAN: Which was what?

17 THE INTERPRETER: Which was the translation that I
18 heard.

19 Q. Expert witness.

20 THE COURT: The question to you was to please clarify
21 what you mean by expert witness.

22 MS. FRIEDMAN: Sorry. Your Honor, I wonder if we
23 could get the mike to the translator again. I'm sorry, I'm
24 just having trouble hearing.

25 Q. Mr. Callejas, did you work with experts who provided

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1 opinions or data to the trial court?

2 A. I haven't worked with any expert who has presented a
3 declaration or a report in this trial that I know of.

4 Q. I'm sorry. I meant to ask you whether you had worked with
5 any experts who provided reports or data to the trial court in
6 the Lago Agrio litigation.

7 A. I have not done so. I have not worked with one that was
8 under my supervision.

9 Q. Who supervised those experts?

10 A. Those experts who were suggested by the company I represent
11 for the judicial inspections worked independently and in
12 coordination with the court, as well as with representatives
13 from Chevron who did not work in the legal area.

14 Q. Were you in charge of deciding the legal strategy Chevron
15 would take in the Lago Agrio litigation?

16 MR. MASTRO: Objection, your Honor. Work product.

17 THE COURT: Sustained.

18 Q. Did you file briefs and motions in the Lago Agrio
19 litigation?

20 A. Yes, I've done so.

21 Q. Did you have any involvement in Chevron's decisions as to
22 which sites it wanted judicial inspections to take place at?

23 MR. MASTRO: Objection to form. Work product.

24 THE COURT: First of all, what's the form objection?

25 MR. MASTRO: I think it's vague, your Honor, as to

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1 involvement and it's not clear.

2 THE COURT: That piece is overruled.

3 What about work product, Mr. Friedman?

4 MS. FRIEDMAN: I think his --

5 THE COURT: Which I think is as much a relevance
6 objection --

7 MR. MASTRO: Yes, your Honor.

8 THE COURT: -- as it is anything else.

9 MS. FRIEDMAN: Well, the relevance part, your Honor, I
10 think goes to his personal knowledge about the various things
11 in his declaration. What I'm really trying to do is get a
12 sense of where his personal knowledge lies and where it
13 doesn't. So to the extent he was involved in decision-making
14 about choosing those sites or if he says I had nothing to do
15 with that, I think that gives the Court a clearer picture.

16 THE COURT: If that's the object, I think there's
17 probably nothing objectionable about your focusing on a
18 specific statement and exploring the question of whether he has
19 personal knowledge for the statement. But otherwise it begins
20 to sound like what you're really doing is trying to find out
21 how Chevron organized its defense, and I don't think you're any
22 more entitled to do that than they're entitled to go into it
23 with you about how your consultations are going.

24 MS. FRIEDMAN: I can do it that way, your Honor.

25 THE COURT: Thank you.

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1 BY MS. FRIEDMAN:

2 Q. Mr. Callejas, could you turn to page 10 of your
3 declaration.

4 THE COURT: Referring to Plaintiff's 4300.

5 A. You said page 10, counsel?

6 Q. Page 10, paragraph 33. Were you personally involved in the
7 activities described in paragraph 33?

8 A. I personally participated in a majority of the judicial
9 inspections that were carried out in Lago Agrio, yes.

10 Q. In what sense did you participate, what was your role?

11 A. My role was to present arguments and defenses by Chevron
12 during those judicial inspections.

13 Q. Mr. Callejas, I want to ask you some general questions not
14 related to the Chevron case.

15 Do the lawyers in your firm sometimes win civil trials
16 in Ecuador?

17 MR. MASTRO: Objection relevance, your Honor.

18 THE COURT: Sustained.

19 Q. Have the lawyers --

20 THE COURT: For whatever relevance it has, which I
21 take to be zero, I'm going to assume they're not still in
22 business unless they do.

23 Q. Do the lawyers in your firm win trials in Ecuador without
24 bribing judges?

25 MR. MASTRO: Objection.

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1 THE COURT: Overruled.

2 Don't take a lot of time on this, Mr. Friedman.

3 MS. FRIEDMAN: Not planning to, your Honor.

4 THE WITNESS: Must I answer?

5 THE COURT: Yes, sir.

6 THE WITNESS: Yes. We've won trials and all the
7 trials we've won we've done so without paying any judges or
8 court officials.

9 Q. In those trials, at least, have you been satisfied with the
10 Ecuadorian judicial system?

11 MR. MASTRO: Objection.

12 THE COURT: Sustained.

13 Q. Going back to the Lago Agrio litigation, is it true that
14 the Chevron lawyers were sanctioned at time by the court for
15 filing frivolous motions?

16 MR. MASTRO: Objection. The record speaks for itself,
17 your Honor.

18 THE COURT: What is the relevance of this?

19 MS. FRIEDMAN: Well, your Honor, some of the things
20 that are in the declaration talk about the background of how
21 proceedings went and there are allegations that plaintiffs were
22 doing things to block things. And I can go to specific
23 paragraphs, but generally speaking that's the allegation. I'm
24 just trying to bring out that this was a hard fought litigation
25 with both sides doing things that the court disapproved of.

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1 MR. MASTRO: And your Honor already ruled that things
2 like excessive motions in Lago Agrio and what Chevron did to
3 litigate in the Lago Agrio case, whether there were excessive
4 motions or the like is out of the case. It's not a part of
5 unclean hands evidence. It's clearly irrelevant. And whatever
6 record there is of that case speaks for itself.

7 THE COURT: And the ruling to which you refer is what?

8 MR. MASTRO: Your Honor, it's your August 17, 2011
9 memorandum opinion that was in the count nine case, docket
10 entry 348. One of the unclean hands allegations that was
11 dismissed was so-called procedural misconduct in the Lago Agrio
12 litigation. This is on page 24, note 69. You dismissed that
13 part of their unclean hands defenses having insufficient basis.

14 MS. FRIEDMAN: Your Honor, I don't know that I'm an
15 expert on what happened before here, but my impression was that
16 the count nine case was a separate case from this.

17 THE COURT: Well, yes, that's absolutely correct. But
18 the unclean hands defense pleaded in that case is precisely the
19 same unclean hands defense pleaded in this case. Indeed, if
20 memory serves, it's precisely the same answer in both cases.

21 And Mr. Mastro is correct, absolutely correct, and the
22 objection is sustained.

23 And I would simply invite your attention to the fact
24 if we're going to try to go down this road that between May 17
25 and the last time I looked, your client and Mr. Gomez filed 30

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1 motions in this case, so many of which one could debate on the
2 ground of whether they were frivolous at least.

3 But let's go on.

4 Q. Is it true, Mr. Callejas, that in the Lago Agrio
5 litigation, the Chevron lawyers filed at least two motions
6 threatening the presiding judge with jail if he didn't rule in
7 Chevron's favor?

8 MR. MASTRO: Objection. The record speaks for itself.

9 THE COURT: I should think so.

10 THE WITNESS: I'm sorry, I didn't hear what was your
11 ruling.

12 THE COURT: I said I should think so.

13 MS. FRIEDMAN: It may speak for itself, your Honor,
14 but I'd like to ask the witness questions about that. But --

15 THE COURT: On what basis? Is the argument that if
16 they filed a motion in public in court saying whatever it is
17 you say they said, that somehow excuses, if it occurred, your
18 client and Mr. Fajardo, one or the other, really in
19 conjunction -- you know what the evidence is that I'm referring
20 to -- going to a judge ex parte and saying if you don't do what
21 we're asking you to do here we will or may file complaint of
22 judicial misconduct against you and immediately thereafter or
23 shortly thereafter the judge did exactly what they told him to
24 do. I mean that's the offer of proof from the other side.

25 You think that's equivalent?

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1 MS. FRIEDMAN: I don't know that it has to be
2 equivalent for this to be admissible, your Honor.

3 THE COURT: I think it's too far fetched. Sustained.
4 If you want to offer a document, I'll consider that
5 separately.

6 MS. FRIEDMAN: All right.

7 Q. Mr. Callejas, would you turn to, I'm sorry, paragraph 35 of
8 your declaration or your witness statement. In this paragraph,
9 you describe efforts by Chevron to inspect one of plaintiffs'
10 labs, and you indicate at the end of the paragraph that on
11 eight separate occasions the Lago Agrio plaintiffs'
12 representatives intervened and blocked the judicial inspection
13 of the laboratory.

14 Is that correct?

15 A. That is so. That is what appears at the end of the
16 paragraph No. 35 of my written statement.

17 Q. And by intervened and blocked the judicial inspection, you
18 mean they went to court and got the judge to prevent Chevron
19 from inspecting the laboratory; is that correct?

20 A. That happened on at least one occasion, and this is shown
21 in one of the favorite parts of the Crude documentary which I
22 have been able to see.

23 Q. Other than going to court to ask for judicial intervention
24 blocking that inspection or those -- let me start over.

25 When you write that the plaintiffs' representatives

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1 intervened and blocked the judicial inspection, are you
2 referring to anything other than going to court to prevent
3 those inspections?

4 A. In regards to the first part of your question where you
5 characterize the actions of the plaintiffs in a way that I'm
6 not in agreement with, I'd like to comment on that if you'll
7 allow it.

8 MS. FRIEDMAN: Of course.

9 THE COURT: Please just answer the question.

10 THE WITNESS: In regards to Attorney Friedman's
11 question, I must say on the eight occasions where we weren't
12 able to -- where the court was not able to carry out the
13 judicial inspection, it was due to indirect actions of the
14 plaintiffs that caused that to happen.

15 For example, when we were told, we were told that the
16 lab was closed when we arrived there with the judge that was to
17 carry out the judicial inspection on site and we were told that
18 that was at the request of the plaintiffs; or actions such as
19 last minute or last minute actions such as filing requests with
20 the court that would prevent judicial inspections from being
21 carried out on the date or time that they had been scheduled.

22 Q. I want to ask you about the first part that you said being
23 told that the lab was closed.

24 Were you there at that attempted inspection?

25 A. No, I was not involved in the inspections. It was done by

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1 other attorneys from my firm.

2 MS. FRIEDMAN: Your Honor, I'd move to strike the
3 answer as hearsay then.

4 THE COURT: Why not, Mr. Mastro?

5 MR. MASTRO: Your Honor, it is what was reported to
6 him by attorneys at his firm.

7 THE COURT: I know. That's what the hearsay rule is
8 all about.

9 MR. MASTRO: I understand, your Honor, I understand.

10 THE COURT: Stricken.

11 Q. Mr. Callejas, I now would like to ask you about the
12 judicial inspections at the sites of claimed oil contamination.

13 Is there a term we can use together to refer to those
14 type of inspections?

15 A. All the inspections that were carried out were done on
16 wells or production stations of the oil industry in Ecuador.

17 Q. So I'll just refer to oil or well inspections, is that a
18 suitable term to talk about the judicial inspections?

19 A. I would suggest a term that we use both in English and
20 Spanish and it would be oil industry facilities.

21 Q. Thank you. Is it correct that judicial inspections of oil
22 industry facilities in the Lago Agrio litigation often took
23 several months to complete?

24 THE COURT: Mr. Friedman, I don't understand your
25 question. Are you saying that there was -- are you suggesting

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1 by the question or inquiring by the question as to whether a
2 particular investigation of a site might have taken months or
3 are you suggesting that the whole process of all of the
4 inspections took months? I don't understand it.

5 MS. FRIEDMAN: I'll ask a better question, your Honor.

6 THE COURT: Thank you.

7 Q. Mr. Callejas, on average, would it be fair to say that the
8 judicial inspection of an oil industry facility site would take
9 several months to complete?

10 THE COURT: I'm having a similar problem with the
11 question. Are you inquiring about how long it took from the
12 moment people arrived on site to the moment they left? Are you
13 suggesting possibly that they were there for several months
14 standing there or doing whatever else they were doing in the
15 jungle or wherever it was?

16 MS. FRIEDMAN: Oh, no, no. That the entire process
17 took.

18 THE COURT: Try to be clear about what you're
19 inquiring about.

20 MS. FRIEDMAN: I'll refer him to the declaration, your
21 Honor.

22 THE COURT: There's no -- I don't think there's any
23 substantive problem. It's a lack of clarity.

24 MS. FRIEDMAN: I understand.

25 Q. Mr. Callejas, could you take a look at paragraph 34 of your

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1 declaration or of your witness statement and specifically the
2 last sentence, and you refer to a judicial inspection cycle.

3 Could you just describe for us what you meant by that?

4 A. With the phrase that states to complete each judicial
5 inspection cycle, I refer to the entire process regarding to an
6 judicial inspection that includes the moment when the judge
7 arrives to begin the judicial inspection and through the
8 continuing on through the issuance of the expert witness's
9 report.

10 Q. Thank you.

11 A. Perhaps in the interpretation it should be added that I was
12 referring not just to the moment when the expert issues his
13 report, but also to the whole process when the parties can
14 object to the whole process.

15 Q. Thank you. And was the process of doing a judicial
16 inspection on an oil industry facility expensive?

17 MR. MASTRO: Objection, your Honor. Vagueness.

18 THE COURT: Sustained, at least as to form. It rather
19 depends on who's doing it and what they want to invest in it,
20 don't you think?

21 Q. How expensive was it to, on average, how expensive was it
22 to do an oil -- a judicial inspection on an oil industry
23 facility in the Lago Agrio litigation?

24 A. I have no personal information that would allow me to
25 answer your question, counsel.

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1 Q. All right. In -- from what you said that you had been to
2 almost all of the judicial inspections?

3 A. Correct.

4 Q. In your view, were the judicial inspections conducted
5 fairly?

6 MR. MASTRO: Objection, your Honor.

7 THE COURT: Pardon?

8 MR. MASTRO: Objection, your Honor. Calls for the
9 witness's opinion about fairness.

10 MS. FRIEDMAN: There are repeated references to the
11 witness's opinions about the judicial inspections, and this
12 would be in the area of lay opinion, your Honor. I'm just
13 trying to get what he observed and how he felt about the
14 process.

15 THE COURT: What he observed there's no objection to.

16 MS. FRIEDMAN: I'll rephrase the question.

17 Q. Did you observe what you considered to be any unfairness in
18 the process?

19 MR. MASTRO: Same objection, your Honor. That's the
20 back door, isn't it?

21 THE COURT: Yeah, I think so. Sustained.

22 Q. Did you file any legal papers or make any arguments to the
23 court that the judicial inspections were being conducted
24 unfairly?

25 MR. MASTRO: Objection to form and the record speaks

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1 for itself.

2 THE COURT: Why not, sir?

3 MS. FRIEDMAN: The record might speak -- I mean there
4 may be documents that reflect this, but.

5 THE COURT: Well, you're asking him whether he filed
6 something. Now, we could put a witness on the stand in this
7 case, we could call in one of the former lawyers to testify as
8 to whether he filed any papers that met some description; but
9 the better way of finding out the answer to that, the best
10 evidence of that would be to look at the docket sheet and the
11 papers, don't you think?

12 MS. FRIEDMAN: That might be the best evidence as to
13 what was filed, your Honor.

14 THE COURT: And whether anything was filed.

15 MS. FRIEDMAN: Or whether anything was filed.

16 Here's the problem I'm having, your Honor. If we look
17 at the declaration, if we look at paragraphs 32 through 35,
18 really everything there would be subject to the Court's same
19 point that the record speaks for itself and that none of this
20 testimony would be permissible. And so I understand how the
21 Court is trying to save time on this and I'm trying to respect
22 that, but.

23 THE COURT: And I think you are. I appreciate that.

24 MS. FRIEDMAN: But I think if the same -- I guess, you
25 know, I don't want to be facetious about it, but I would make

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1 the same argument as to paragraphs 33 through 35 that they
2 ought to be stricken because the record is the best evidence of
3 that.

4 THE COURT: The problem is that at least in some
5 respects it appears to me that your premise is not accurate.
6 For example, paragraph 33 begins by saying each inspection
7 began with the court hearing any procedural matters, then
8 swearing in the parties' nominated experts -- let's just take
9 it that far.

10 Now, I think I understood that there was no
11 stenographic record; is that true?

12 MS. FRIEDMAN: I think no.

13 THE COURT: I think what we heard was that there was a
14 secretary present. The secretary took notes. The secretary at
15 the end of the proceeding then consulted with the lawyers and
16 something called an acto was prepared by the secretary and the
17 acto was filed. Is that not true?

18 MS. FRIEDMAN: Well, there's been a deposition that
19 was taken that I don't want to talk about, but essentially I
20 think, I think I can make an offer of proof to the Court that
21 there was a tape recording made of the entire proceedings.

22 THE COURT: Each and every one?

23 MS. FRIEDMAN: At least every one -- I can ask
24 Mr. Callejas. Maybe that would be the best way.

25 THE COURT: Let's try that.

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1 Q. Mr. Callejas, was a tape recording made of the judicial
2 inspections?

3 A. Yes, sir. From the very first judicial inspection we
4 agreed that all the statements by counsel and other people
5 intervening in the inspections would be recorded. And at the
6 end of the day, the statements recorded would be transcribed
7 literally on paper by the secretary directly and it would be
8 revised by the attorneys and after that -- attorneys for both
9 sides -- after that, the statements would be put into the acto,
10 the certificate.

11 Q. And so --

12 THE COURT: Let me just clarify.

13 Mr. Callejas, are you saying there was an electronic
14 or magnetic recording made or are you saying something else?

15 THE WITNESS: Yes. Yes. Each party had at least
16 three tape recorders that were placed in front of the person
17 who was speaking in order to record what that person was
18 saying, your Honor.

19 THE COURT: And are you saying that those recordings
20 then were transcribed verbatim?

21 THE WITNESS: Correct, your Honor.

22 THE COURT: And were the verbatim transcripts then
23 included in the acto?

24 THE WITNESS: That's correct as well, your Honor.

25 MS. FRIEDMAN: So, your Honor, I don't want to be

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1 hyper-technical about the issue. I'm just trying to get to --

2 THE COURT: I appreciate that.

3 MS. FRIEDMAN: So what I would either do -- well, what
4 I would do is ask that 33 through 35 be stricken or that I be
5 permitted to ask him the types of questions I was trying to
6 ask.

7 THE COURT: I'm not going to strike them. I'll permit
8 you to question appropriately. I'm not giving an advisory
9 opinion about what might constitute the type of questions you
10 were trying to ask, particularly those that I haven't heard
11 yet.

12 MS. FRIEDMAN: Understood. Thank you, your Honor.
13 Q. Mr. Callejas, did you observe any impropriety in the way
14 the judges conducted the judicial inspections?

15 MR. MASTRO: Objection to form, your Honor.
16 Vagueness.

17 THE COURT: Sustained.

18 MS. FRIEDMAN: I didn't hear the objection, your
19 Honor.

20 THE COURT: The objection was form and vagueness.
21 What you're doing is using the term impropriety and asking for
22 the witness to adopt some unknown definition of the term and to
23 answer the question.

24 MS. FRIEDMAN: I guess in a sense that's what we
25 always do, your Honor.

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1 THE COURT: Really?

2 MS. FRIEDMAN: The term, I mean we use terms without
3 defining them when we ask questions. So I'll try to come at it
4 a different way.

5 THE COURT: Look, Mr. Friedman, this has been
6 occurring I think through this trial. But regardless of
7 whether it's happened before, you have a proceeding down there.
8 There is a record of some kind. And you, at least in this
9 case, are asking questions that are asking the witness to
10 characterize what's on pieces of paper.

11 Now, it's very simple, I think, your point here. I
12 think your point is that he was at all or most of the judicial
13 inspections. He either did or didn't, and the record will
14 reveal which, make some application to the court complaining
15 that something had been done at one or more of them that
16 Chevron contended was inappropriate. Did or didn't.

17 Now, your point is, I take it, that if there are no
18 such complaints, then everything was hunky-dory and that's
19 certainly a permissible argument. But what we're doing here
20 with this line of examination, other than things that I don't
21 think are particularly appropriate here, I don't understand. I
22 really don't understand it.

23 MS. FRIEDMAN: Well, I guess, your Honor, the --

24 THE COURT: Should we call Mr. Mastro to the stand and
25 say have the defendants in this case done anything that you

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1 regard as improper?

2 MS. FRIEDMAN: Well.

3 THE COURT: I imagine that might be a long answer.
4 And if we call Mr. Donziger and ask him the same question I'm
5 sure it will be at least as long.

6 MS. FRIEDMAN: I would state it the other way, your
7 Honor. If we're talking about Ecuador, is the Court only going
8 to review what's on the record or is it going to allow
9 testimony of things that aren't on the record, for example, the
10 offer of proof you mentioned earlier this morning. Is there
11 going to be testimony about plaintiff lawyers coming in off the
12 record and doing things that are not reflected on the record?
13 I'm asking him about things that may not be reflected on the
14 record. They may be reflected on the record.

15 THE COURT: So if they're reflected on the record,
16 it's a waste of time.

17 So now let's get to the next point. What specifically
18 are you asking him? You have his testimony. You have his
19 testimony. You have a pleading which I think is close to a
20 couple of hundred pages. You have a record in this case with
21 almost 1500, no, more than 1500 filings by the parties, answers
22 to interrogatories, probably 40, 50 depositions. You've got
23 another 30 depositions, at least, out of the 1782s. You've got
24 a gigantic record. And if there's something specific that you
25 want to ask him about that isn't in the record and it's

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1 relevant, have at it.

2 Q. Mr. Callejas, why did Chevron object when the judicial
3 inspections were halted?

4 MR. MASTRO: Objection. Work product, your Honor.

5 THE COURT: Sustained. You don't get to ask opposing
6 counsel in the circumstances presently before me why they took
7 various steps.

8 Q. Mr. Callejas, would you turn to paragraph 35 of your
9 declaration, please. You write during the judicial
10 inspections, I observed that the experts suggested by the Lago
11 Agrio plaintiffs generally used methods that did not meet the
12 requirements of the terms of reference, the sampling plan, or
13 the analysis plan.

14 Was that observation by you put into the record at any
15 place?

16 MR. MASTRO: Objection, your Honor. Again, the record
17 speaks for itself.

18 THE COURT: I'm going to allow this. This is a
19 specific question about a specific allegation. He's entitled
20 to go into it.

21 MR. MASTRO: Certainly, your Honor.

22 A. We did so when we would file my client's comments to the
23 reports filed by the plaintiff nominated experts in the Lago
24 Agrio case.

25 Q. In the next sentence you say that your team and you

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Callejas - cross

1 suspected that the HAVOC laboratory did not have the analytical
2 capability or facilities to run the tests required.

3 When you refer to your team and you, are you referring
4 to you and other lawyers or some other team?

5 A. I am referring both to the legal team and the technical
6 team that was working with us on these issues.

7 Q. And the suspicions that you had resulted in initiating
8 separate judicial proceedings in Quito; is that correct?

9 A. Yes. When we were certain that the results that had been
10 obtained from that laboratory could not have been so because
11 they were not duly accredited nor did they have the necessary
12 equipment to carry out those analysis, we filed, we filed a
13 request for a judicial inspection of that laboratory.

14 Q. For the reasons you just stated?

15 A. Yes. On the website of the Ecuadorian accreditation
16 institute it states that the only samples that could have been
17 tested by this laboratory were water samples to establish
18 acidity and their PH.

19 Q. Mr. Callejas, I'd like you to look --

20 MS. FRIEDMAN: I'm sorry, your Honor. My notes are
21 not clear if we've introduced PX430 yet. If not, I would ask
22 to introduce.

23 THE COURT: Tell me what it is, please.

24 MS. FRIEDMAN: It's the appellate decision.

25 THE COURT: I think it's in. Andy, is it in?

DAMLCHE1

Callejas - cross

1 THE DEPUTY CLERK: I'd have to check the transcripts,
2 Judge.

3 (Continued on next page)

DAM8CHE2

Callejas - cross

1 MR. MASTRO: It is in, your Honor, I believe not for
2 the truth of the matters asserted.

3 MR. FRIEDMAN: Your Honor, I would also ask the Court
4 to take judicial notice of the decision under, I think it's
5 Rule 201.

6 THE COURT: If it's already in evidence, why do I have
7 to take judicial notice of it?

8 MR. FRIEDMAN: There is a case called *A.I. Trade*
9 *Finance, Inc. v. Centro*, which is 926 F.Supp. 378, which -- I
10 don't need to get into it now, but essentially my reading is it
11 says that if a foreign judgment is taken judicial notice of,
12 that that is -- the word is not coming to me -- prima facie
13 evidence of the facts stated. So I don't know that you have to
14 rule on that now, but I wanted to put the request on the
15 record.

16 MR. MASTRO: Your Honor, we have objected and continue
17 to object to this backdoor way to argue collateral estoppel
18 without putting their name on it. It's not admitted for the
19 truth of the matters asserted, and they are arguing collateral
20 estoppel.

21 THE COURT: You can make a motion on papers.

22 MR. FRIEDMAN: All right. Thank you.

23 BY MR. FRIEDMAN:

24 Q. Mr. Callejas, do you recognize Exhibit 430?

25 MR. FRIEDMAN: It just occurred to me, your Honor, we

DAM8CHE2

Callejas - cross

1 should give him the Spanish version. I will just ask.

2 Q. Mr. Callejas, are you familiar enough with this and is your
3 English good enough to recognize what this is?

4 MR. MASTRO: The Spanish is attached, your Honor.

5 THE COURT: Pardon me?

6 MR. MASTRO: The Spanish version is attached in the
7 back.

8 MR. FRIEDMAN: Can I have just a second?

9 May I approach the clerk, your Honor?

10 THE COURT: Yes.

11 Q. In case you need a hard copy, I think the Spanish one is
12 halfway in.

13 THE COURT: Mr. Friedman, I would appreciate it you
14 would try to pick up the pace here. You told me last night you
15 had about an hour left, and we are past the hour mark.

16 MR. FRIEDMAN: I understand.

17 BY MR. FRIEDMAN:

18 Q. If you could turn to Bates stamp 401 in the English, the
19 last three digits are 401 in the English version. Does this
20 reference up at the top the position Chevron took in its appeal
21 brief about certain data not being present in the underlying
22 record of the case?

23 MR. MASTRO: Your Honor, objection. The document
24 speaks for itself.

25 THE COURT: Well, the document is not in for the truth

DAM8CHE2

Callejas - cross

1 of the matters asserted, but the appeal brief speaks for itself
2 and is the best evidence of what it said. And so the objection
3 is sustained. If you want to offer the appeal brief and you
4 think it's relevant, Mr. Friedman, we can deal with that. We
5 are not going to do it this way.

6 MR. FRIEDMAN: Your Honor, I would like to show the
7 witness DX 1353.

8 Q. Mr. Callejas, are these pages that have been put into DX
9 1353 pages from the Lago Agrio trial court record?

10 THE COURT: Is there a dispute about that or not, Mr.
11 Mastro?

12 MR. MASTRO: Your Honor, there doesn't appear to be a
13 dispute about it, but it's the first time we have seen this
14 document. It was not actually on their exhibit list. So we
15 would have to verify it. The notations in the top corner of
16 the page seem consistent with that, but we would have to verify
17 it. This is the first time this has ever been disclosed to us
18 as a defendants' exhibit. It only looks like a partial
19 document, too, your Honor.

20 THE COURT: The first part of it, they are entitled to
21 use things on cross that were not listed previously as
22 exhibits, as are you. So what you're telling me is it looks to
23 you like it probably is pages from something in the record.

24 So what is the question, Mr. Friedman?

25 MR. FRIEDMAN: Maybe I could propose a stipulation and

DAM8CHE2

Callejas - cross

1 give Chevron a chance to think about it and save some time
2 here. The only point of moving to introduce these pages is
3 that they correspond to the pages in this appellate opinion in
4 which the appellate court is essentially saying, yes, the
5 things that Chevron says were not in the prior record actually
6 were.

7 THE COURT: I appreciate that. Why don't you propose
8 the stipulation. If they are what you say they are, I imagine
9 there is not going to be a problem, and if there is, you will
10 let me know. You are going to have to put this into English
11 though because I can't read it.

12 MR. FRIEDMAN: Let me ask the witness a few questions
13 then on this, your Honor. I am caught in this bind that the
14 record speaks for itself, but it doesn't speak for itself.

15 THE COURT: It is not a bind. You can't expect me to
16 rely on Spanish language documents. I don't speak Spanish.
17 Court proceedings are conducted in English in this country.

18 MR. FRIEDMAN: I understand. I will try to quickly do
19 this with Mr. Callejas.

20 THE COURT: Yes, please.

21 BY MR. FRIEDMAN:

22 Q. Mr. Callejas, in this page of the appellate opinion, the
23 court references several pages where data regarding alleged
24 contamination is found. Is that a good -- well, let me stop
25 there.

DAM8CHE2

Callejas - cross

1 THE COURT: Don't characterize it, please.

2 This is not rocket science.

3 MR. FRIEDMAN: It feels like it is.

4 THE COURT: That's nobody's fault here. You know, you
5 have something that you say comes from the record. I take it
6 there will be a dispute about it. If it supports the statement
7 in the appellate opinion, fine. If it doesn't, fine. My point
8 to you is only I can't read it.

9 MR. FRIEDMAN: I understand.

10 THE COURT: I can read the numbers. I can't read the
11 Spanish.

12 Q. Mr. Callejas, if you look on this page of the appellate
13 opinion where they refer to page 104909 of the record, is that
14 the first page of Exhibit 1353?

15 THE COURT: That's like asking whether four comes
16 before five. You have got an exhibit here. Up in the corner
17 it's written 104909 in handwriting. That part I can read. OK.

18 MR. FRIEDMAN: I have to ask that first before I go to
19 the next question.

20 THE COURT: No. I assume he can read it too. He
21 seems to be a literate gentleman.

22 Q. Mr. Callejas, let me ask you a different question.

23 Does 104909 reflect data for the Sacha field of the
24 Sacha North Central Station?

25 MR. MASTRO: Objection, your Honor.

DAM8CHE2

Callejas - cross

1 THE COURT: And the objection is?

2 MR. MASTRO: Either the document reflects that or not.
3 The document speaks for itself.

4 THE COURT: That seems to be right. If the document
5 is what it purports to be, it purports to have data for
6 whatever it says it has data for.

7 Now, you're asking this man to tell you whether --
8 you're asking him a question that I think is very compound.
9 Suppose for the sake of argument this is a document from the
10 record, and it's a total forgery, somebody made it all up.
11 That could be. I am not saying it is. I have no reason to
12 suspect that it is. How does he know? Do you understand?

13 We can all read what is on a piece of paper once you
14 get it translated. I can even help you on that. I imagine
15 that TPH means total petroleum hydrocarbons, that bario with
16 one "R" is the Spanish word for barium, that chromo is an
17 abbreviation for chromium, and so forth.

18 Could we move this on? This is taking forever for
19 something that is unnecessary to take remotely a tiny fraction
20 of the amount of time to do.

21 MR. FRIEDMAN: I would move into evidence DX 1353.

22 THE COURT: You already did, and it was objected to,
23 and for the time being I sustained it, because counsel wants to
24 verify that it is what you say it is. You offered him a
25 stipulation and an opportunity to think about it. I take it

DAM8CHE2

Callejas - cross

1 you're not withdrawing that offer.

2 MR. FRIEDMAN: No, I am not.

3 THE COURT: Could we move along?

4 MR. FRIEDMAN: All right.

5 THE COURT: I hate to get impatient about this.

6 MR. FRIEDMAN: I understand what you're saying.

7 Your Honor, what I would just clarify for Mr. Mastro
8 is that there are two or three of these where the page numbers
9 are a little off, and I will talk to him about that.

10 THE COURT: Please do.

11 I know this is difficult. You folks have a huge
12 record. You are relatively new to the case. I understand all
13 of that. Why do we have to take this time in court about this
14 kind of stuff that could be worked out in five minutes between
15 two reasonable people, and I think you are?

16 BY MR. FRIEDMAN:

17 Q. Mr. Callejas, I would like to move on to a different
18 subject. Yesterday you said that for some period of time
19 Mr. Borja's office was in the same building as yours, is that
20 correct?

21 A. Yes, that's true. That's correct.

22 Q. And Mr. Borja's uncle owns that building?

23 A. I don't know how many uncles Mr. Borja has. Perhaps you
24 could tell me who you are referring to.

25 Q. Is this referred to as the Borja Paez building?

DAM8CHE2

Callejas - cross

1 A. Yes, it is the Borja Paez building, in which my offices
2 were located, in which the lab was also located where Mr. Borja
3 worked.

4 Q. How long was your office in that building?

5 A. I purchased that office in the year 1997.

6 Q. Is your office still in that building?

7 A. That's correct. That's my personal office, and it is still
8 in that building.

9 Q. Approximately how long was Mr. Borja's office in that
10 building?

11 A. I don't recall exactly how long, perhaps several years.

12 Q. And you told us that you would occasionally greet him in
13 the hall or elevator?

14 A. Yes. I said that yesterday. That's right.

15 Q. Have you watched or listened to the tapes of Mr. Borja
16 talking to his friend Escobar?

17 MR. MASTRO: Objection, your Honor.

18 THE COURT: And the objection is what?

19 MR. MASTRO: Characterizing Escobar and tapes just as
20 a general listing.

21 THE COURT: Be more specific, Mr. Friedman.

22 Q. Have you watched or listened to any recordings of Mr. Borja
23 talking to a man named Escobar?

24 THE INTERPRETER: Is it E-S-T-E-B-A-N?

25 MR. FRIEDMAN: E-S-C-O-B-A-R.

DAM8CHE2

Callejas - cross

1 A. I have not seen nor heard the recordings that you're
2 referring to, counsel.

3 Q. Have you seen or heard of any recordings where Mr. Borja is
4 talking about his work with Chevron?

5 A. I have not seen nor heard any recording in which Mr. Diego
6 Borja talks about his work.

7 Q. Have you seen or heard any tapes or recordings taken of
8 Mr. Borja in October of 2009 where he talks about forming four
9 companies to do work for Chevron?

10 A. I have not seen nor heard the tapes that you're referring
11 to, counselor.

12 Q. Have you heard of Mr. Borja's company Interintel G, S.A.?

13 A. Can I see the writing of the name?

14 Q. Yes.

15 A. On the screen perhaps?

16 Q. I will come back to that when we come across a page that
17 has it on it.

18 A. Thank you.

19 Q. Have you seen or heard tapes or seen transcripts of tapes
20 where Mr. Borja states that the Chevron labs were not
21 independent?

22 MR. MASTRO: Objection. Objection to form. Compound.
23 And not knowing what the witness would answer, but it may
24 involve attorney-client or work product communications.

25 THE COURT: Just answer yes or no, Mr. Callejas.

DAM8CHE2

Callejas - cross

1 A. I have no personal knowledge of the facts that you're
2 asking me about.

3 Q. Have you seen any transcripts at all relating to Mr. Diego
4 Borja?

5 That's a bad question so let me ask it again.

6 Have you seen any transcripts of any conversations
7 Mr. Borja has had with anyone?

8 A. I have seen parts of a transcription of a video that
9 Mr. Borja made of a meeting he held with Judge Nunez in the
10 city of Quito. I have seen portions of that video and a
11 transcription of that portion.

12 Q. Other than that video and transcription that you just
13 described, have you seen any transcripts of any conversations
14 Mr. Borja has had with anybody?

15 A. Not that I recall.

16 Q. Have you seen any videotapes of Mr. Borja other than what
17 you just described?

18 THE COURT: He hasn't described seeing videotapes.

19 Q. Have you seen any videotapes or heard any audiotapes of
20 Mr. Borja other than the one you just referred to with Judge
21 Nunez?

22 A. I have not seen nor heard any other video of Mr. Borja.

23 Q. Are you aware that Chevron helped Mr. Borja relocate to the
24 United States?

25 MR. MASTRO: Objection, your Honor. It gets into work

DAM8CHE2

Callejas - cross

1 product or attorney-client privilege.

2 MR. FRIEDMAN: I think he testified to that in his
3 deposition, your Honor.

4 THE COURT: I don't know.

5 Q. You told us yesterday, Mr. Callejas, that you had a
6 conversation with Mr. Borja about his videotaping of Judge
7 Nunez. Do you remember that testimony yesterday?

8 A. Yes. I remember it perfectly.

9 Q. Can you tell us how that conversation with Mr. Borja came
10 about?

11 A. One day, on a day that I cannot remember, I received a call
12 in my office from Eduardo Borja telling me that Diego Borja
13 wished to see me and asking me if I would go up to the offices
14 there in the Borja Paez building where he works, where he rents
15 an office.

16 MR. MASTRO: Move to strike that as hearsay.

17 THE COURT: Overruled. It's not offered for the
18 truth. It's offered to set the framework as to what caused
19 them to go, I assume we are going to hear, upstairs.

20 Q. Did you say Eduardo Borja is the one who called you?

21 A. Yes. Eduardo Borja called me, and he rents an office in
22 the same Borja Paez building.

23 Q. Did you go to his office?

24 A. Yes. Several minutes later I went to Eduardo's offices.

25 Q. Can you tell us who was at Eduardo's office when you got

DAM8CHE2

Callejas - cross

1 there?

2 A. Only Eduardo Borja and Diego Borja were there, and then I
3 arrived at that meeting.

4 Q. Can you tell us, generally speaking, what was discussed in
5 that meeting?

6 A. Diego mentioned to me that he had filmed a meeting that he
7 participated in in a hotel in Quito with a judge hearing the
8 Lago Agrio case at the time, Judge Juan Nunez.

9 Q. What was your response to that information, what did you
10 say in response to hearing that?

11 A. I asked him to tell me a bit more about how he had made
12 that recording and under what circumstances he had done so.

13 Q. What did he tell you in that regard?

14 MR. MASTRO: Your Honor, now we are getting into
15 hearsay.

16 MR. FRIEDMAN: It has to do with what he did. He was
17 told something and then he did something in response.

18 THE COURT: So it's not offered for the truth of the
19 statements by Diego Borja, is that right?

20 MR. FRIEDMAN: That is right.

21 THE COURT: Mr. Mastro?

22 MR. MASTRO: That's fine, your Honor.

23 THE COURT: Overruled. It's received not for the
24 truth of the matters asserted.

25 A. Could you repeat your question, please?

DAM8CHE2

Callejas - cross

1 Q. I am not sure I can exactly.

2 THE COURT: It was, what did he tell you in that
3 regard?

4 Q. What did he tell you in regard to taping this meeting?

5 A. By that date there were no longer judicial inspections
6 being carried out, and so Diego told me that he and a friend
7 were seeking to find a way to work in the oil industry in
8 Ecuador. And he told me that for that reason his friend, who
9 had a company that worked in the area of environmental
10 remediation, some days earlier when he had been in Lago Agrio,
11 a person Diego knew told him that he could arrange a meeting
12 with Judge Nunez to talk about environmental remediation that
13 would be done after the judgment was issued against Chevron.
14 And he told me that two such meetings with this person and with
15 others had already taken place in Lago Agrio and in Quito, and
16 that he had also recorded those.

17 Q. Did he offer to show you the recordings -- I'm sorry. Let
18 me start over.

19 Did you understand at the time that these were video
20 or audio recordings?

21 THE COURT: Sustained as to the understanding. You
22 can ask what was said.

23 Q. Did he tell you whether these were video or audio
24 recordings?

25 A. He said to me that they were video with audio recordings.

DAM8CHE2

Callejas - cross

1 I maybe misspoke or wasn't clear in my earlier answer to your
2 question.

3 Q. Did he offer to play these recordings for you?

4 A. No, he didn't do so, nor did I ask him to.

5 Q. Did you take any actions as a result of the conversation
6 that you had with Mr. Borja?

7 A. Yes, I did.

8 Q. What did you do?

9 A. I told Diego that I would talk to my client and sometime
10 later I would tell him what instructions I had received in this
11 regard.

12 Q. Did you later give Mr. Borja instructions?

13 A. I hadn't before, nor any time after that, given any
14 instructions to Mr. Borja.

15 Q. Did you report back to Mr. Borja after this conversation?

16 A. Yes, I did.

17 Q. What did you tell him?

18 A. I told him that I'd talk to my client and in the next days
19 soon thereafter somebody could be contacting him. And that's
20 the last time that I saw Diego Borja or spoke to him.

21 Q. That's the last time entirely that you ever seen or spoke
22 to him?

23 A. Yes. That's the last time that I had seen him or
24 personally spoken to him.

25 Q. Did you report to any authorities the information that

DAM8CHE2

Callejas - cross

1 Mr. Borja had conveyed to you?

2 A. Yes. We did so as soon as all of the material that
3 Mr. Borja said he had was given to my client. I don't know if
4 I am violating a privilege. I don't have any instruction from
5 my lawyer in this regard.

6 Q. Did you prepare any affidavit or declaration regarding this
7 encounter with Mr. Borja?

8 MR. MASTRO: Your Honor, now we are getting into work
9 product.

10 THE COURT: It's a yes or no question. Let's find out
11 the answer.

12 A. No, I did not.

13 Q. Now I would like to ask you some questions about Judge
14 Guerra.

15 THE COURT: This is a good place to break. We will
16 take a short break.

17 (Recess)

18 THE COURT: Two things before we begin.

19 Mr. Friedman, first of all, I understand your
20 quandary, or what you're perceiving as a quandary, and it seems
21 to me vis-a-vis the record. And let me just offer this
22 thought. Both sides have the same problem, if it's a problem
23 with respect to that. And I think it's not much of a problem.

24 If you or the other side contend that there is
25 something in the record, well then you can offer whatever it

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Callejas - cross

1 is, and that will or won't prove that it's in the record. If
2 what you're trying to prove, either one of you, is the absence
3 of something from the record, you're each at liberty to go to
4 the other side and say, would you agree that in lieu of putting
5 in the whole record and translating it into English, which
6 might take a few years, I want an agreement that it's not
7 there, whatever it is.

8 And if you reach an agreement, that's fine. And if
9 you don't, and the other side says, to whoever is seeking the
10 stipulation that something is not there, well, show me what you
11 think is there that shows that it's there, and you can agree
12 that whatever they point to is there, and it either will prove
13 or will not prove that something is not absent. I think that's
14 a perfectly practical way of proceeding, unless somebody
15 persuades me otherwise.

16 MR. FRIEDMAN: We will give it a try and see how it
17 works.

18 THE COURT: My question to you then is, now that we
19 have completed this second hour of your estimated hour, how
20 much more?

21 MR. FRIEDMAN: I didn't think about how it takes
22 longer with translators.

23 THE COURT: You're right about that. I understand
24 that.

25 MR. FRIEDMAN: I think the rest of what I have will go

DAM8CHE2

Callejas - cross

1 very quickly. I will definitely be done before noon.

2 THE COURT: Fine.

3 Let's proceed.

4 BY MR. FRIEDMAN:

5 Q. Mr. Callejas, I forgot to ask you with regard to Mr. Borja,
6 to what authorities did you report the information that he gave
7 you?

8 MR. MASTRO: Objection. It assumes facts not in
9 evidence.

10 THE COURT: I can't hear you.

11 MR. MASTRO: Objection to form. It assumes facts not
12 in evidence, that he gave you.

13 THE COURT: I understand that "I object to the form"
14 just comes out. But what is the objection to the form?

15 MR. MASTRO: It's the use of the phrase "that he gave
16 you."

17 THE COURT: All right. You want to rephrase it?

18 Q. You had a conversation with Mr. Borja in which he told you
19 various things about --

20 THE COURT: One or more recordings.

21 Q. -- one or more recordings, is that correct?

22 A. That's correct.

23 Q. I think you told us before the break that at one point you
24 reported the information Mr. Borja had given you to the
25 authorities, is that correct?

DAM8CHE2

Callejas - cross

1 A. Yes. That's correct.

2 Q. To which authorities did you report?

3 A. I personally, as Chevron's attorney, reported this to the
4 National Judiciary Council, which is the oversight, the
5 discipline entity for the legal function in Ecuador. And,
6 also, another attorney for Chevron reported this fact to the
7 attorney general's office of Ecuador, and also to the
8 prosecutor general's office of the state.

9 Q. Why did you make those reports?

10 MR. MASTRO: Objection, your Honor. Work product,
11 attorney-client.

12 THE COURT: Sustained.

13 Q. I am switching topics now, Mr. Callejas, to Mr. Guerra.

14 In 2009, did you have any information that would
15 indicate that Mr. Guerra was writing orders for Judge Zambrano?

16 A. No, I did not have that information on the date that you
17 mentioned.

18 Q. In 2010, did you have any information indicating that
19 Mr. Guerra was writing orders for Judge Zambrano?

20 A. I am trying to recall the year 2010, but that's a
21 little -- it's a bit difficult knowing when I had that
22 information.

23 Q. Did you have that information before the verdict was
24 written?

25 A. Yes. I think it was shortly before the month of February

DAM8CHE2

Callejas - cross

1 2011, which is when the judgment was issued with Judge
2 Zambrano's signature.

3 Q. What information did you have indicating that Mr. Guerra
4 was writing orders for Judge Zambrano?

5 A. I had that information based on conversations that the
6 former Judge Guerra had had with Alberto Racines from my
7 office.

8 Q. If you would look at paragraph 63 of your declaration. You
9 state that each lawyer in your office is obligated to report to
10 you any improper or illicit contact or solicitation of a bribe
11 from any government or judicial official. Is that correct?

12 THE COURT: That's what it says. Is there a question?

13 A. Yes. This is how I have handled this case. That's kind of
14 the leadership I like to establish in this case in order to
15 have them inform me of this.

16 Q. That's just not in this case, that's how you run your
17 office always, isn't it?

18 A. That's correct.

19 Q. And that is because such solicitations are against the law,
20 correct?

21 MR. MASTRO: Objection. It calls for a legal
22 conclusion.

23 THE COURT: Overruled.

24 A. That is because it is both against the law, but, also, it
25 goes against the moral and ethical principles with which we

DAM8CHE2

Callejas - cross

1 have always run our office.

2 Q. I would like to hand you what we have marked as DX 99.

3 It's a little confusing because the front page says
4 Exhibit E, which you should ignore.

5 Is DX 99, the first five pages, an affidavit that you
6 wrote?

7 A. Yes. This is a photocopy of an affidavit that I wrote and
8 signed.

9 Q. Then if you would turn to page 8 of this exhibit, is that
10 another affidavit that you -- a copy of another affidavit that
11 you wrote and signed?

12 A. Correct.

13 Q. Without describing the specific information, can you tell
14 us what has been removed or redacted from page 9?

15 MR. MASTRO: It was redacted on privilege grounds. So
16 we would object to him testifying to what it is.

17 MR. FRIEDMAN: I am just trying to get the nature of
18 the privilege.

19 THE COURT: This is a document filed in this case,
20 right?

21 MR. FRIEDMAN: I believe so.

22 THE COURT: So it's in the court record in full, is
23 that right, Mr. Mastro?

24 MR. MASTRO: Absolutely, your Honor.

25 THE COURT: And the basis for the privilege claim, Mr.

DAM8CHE2

Callejas - cross

1 Mastro, is what?

2 MR. MASTRO: It involved attorney-client
3 communication.

4 THE COURT: Let's move on.

5 Q. Mr. Callejas, is it accurate that in the summer of 2009,
6 you learned that Dr. Guerra had approached a member of your
7 legal team about causing a favorable outcome in this case, in
8 the Chevron case?

9 A. What I recall from that conversation between Alberto
10 Racines from my office and former Judge Guerra is that he said
11 that the judgment in the Lago Agrio case was about to be
12 issued, and he would like to talk to him about that.

13 Q. Did he also communicate, as you understood it, that the
14 case could be decided in favor of Chevron for a price?

15 A. Alberto told me that's what he inferred from his
16 conversation with former Judge Guerra.

17 Q. Did you report this information to the authorities at the
18 time?

19 A. At that time, even the attorney for the Lago Agrio
20 plaintiffs, Pablo Fajardo, was saying that the judgment would
21 be issued soon, and he would say that often in the press. So
22 that the only thing that I was informed about was what Alberto
23 Guerra told Mr. Racines.

24 Q. Didn't you understand that Dr. Guerra was offering to fix
25 the case for a price?

DAM8CHE2

Callejas - cross

1 A. In that first meeting, according from what Alberto told me,
2 they only discussed that the judgment was about to be issued,
3 not that he could fix the case.

4 Q. If I could refer you to Defendants' Exhibit 99, paragraph
5 2.

6 MR. FRIEDMAN: I move for admission of Exhibit 99.

7 THE COURT: Mr. Mastro.

8 MR. MASTRO: No objection, your Honor.

9 THE COURT: 99 is received.

10 (Defendants' Exhibit 99 received in evidence)

11 Q. Mr. Callejas, if you go to the section about four lines
12 from the top -- I'm sorry, from the bottom, it says,
13 Dr. Racines told me he understood this to be an overture by
14 Dr. Guerra to influence the outcome of the Aquinda case in
15 Chevron's favor for a price.

16 Does that refresh your recollection as to what you
17 understood at the time?

18 MR. MASTRO: Objection, your Honor.

19 THE COURT: Sustained as to form. He didn't profess
20 any lack of recollection.

21 Q. Is that an accurate statement as to your understanding at
22 the time?

23 A. From the way it appears on the fourth line from the bottom
24 of page 2, it states that Alberto Racines understood that
25 that's what it was, that it could be fixed for a price, not

DAM8CHE2

Callejas - cross

1 that I understood.

2 Q. Would you agree that this is an improper solicitation?

3 MR. MASTRO: Objection, your Honor.

4 THE COURT: Look, Mr. Friedman, what it actually says
5 is that Mr. Racines told the witness that Guerra told Racines
6 that the decision would come soon, and he wanted to discuss it,
7 period, full stop. Racines then said that he, Racines,
8 understood that to be an overture to influence the outcome for
9 a price.

10 Your question in that context is making assumptions
11 that may be entirely correct, but they are assumptions, and
12 they are a couple of steps removed. This is an important area
13 of inquiry and an appropriate one, but please try and ask
14 questions that are specific and consistent with what is before
15 us. It will go a lot easier.

16 Q. Did Dr. Racines work for you?

17 THE COURT: We already know that. Can we move along?

18 Q. Did you instruct Dr. Racines to report this to the
19 authorities?

20 A. No, I did not.

21 Q. Did you start any investigation of this overture?

22 MR. MASTRO: Your Honor, we are getting into work
23 product and privilege.

24 THE COURT: Answer it yes or no, sir.

25 A. I did no investigation of the issue.

DAM8CHE2

Callejas - cross

1 Q. Again, in October, did Mr. Racines tell you that he had
2 received another contact from Dr. Guerra?

3 A. Yes. He informed me that he had received a telephone call
4 from former Judge Guerra.

5 Q. Did he inform you that Judge Guerra offered to serve as an
6 intermediary in communicating with Judge Zambrano?

7 A. Yes, that's what Alberto Racines informed me.

8 Q. Did he inform you that Dr. Guerra was offering to correct
9 errors that had or -- let me start over.

10 Did he inform you that he could communicate with Judge
11 Zambrano and arrange for the correcting of errors that former
12 Judge Juan Nunez had committed?

13 MR. MASTRO: Objection to form. That he informed you
14 that he could communicate. There's two different he's.

15 THE COURT: Yes.

16 MR. FRIEDMAN: I will rephrase it.

17 Q. Let me just ask you this, Mr. Callejas. Were you informed
18 by Dr. Racines that Dr. Guerra was offering to fix the entire
19 case due to his influence with Judge Zambrano?

20 THE COURT: Don't you want to break that question up,
21 Mr. Friedman, really? Your "due to his influence" limits the
22 breadth of the question. From your own perspective, don't you
23 want to break it up?

24 MR. FRIEDMAN: I will break it up.

25 (Continued on next page)

DAMLCHE3

Callejas - cross

1 BY MS. FRIEDMAN:

2 Q. Did Dr. Racines communicate to you that Dr. Guerra was
3 offering to fix the case?

4 A. Yes, he did.

5 Q. And did he communicate that Dr. Guerra was saying he could
6 fix the entire case because of his influence with Judge
7 Zambrano?

8 A. No, no, he didn't mention to me how he could do it. From
9 what Alberto told me, he, Guerra, told him that he could
10 correct the mistakes that had been committed by Judge
11 Zambrano's predecessors.

12 Q. And he was also offering to fix the entire case; is that
13 correct?

14 MR. MASTRO: Objection, asked and answered.

15 THE COURT: Racines told him.

16 Q. Let me ask a different question.

17 Did Racines tell you that Dr. Guerra offered to fix
18 the entire case?

19 MR. MASTRO: Objection, asked and answered.

20 THE COURT: Of course I'm going to allow this, just
21 like I allowed it the last two or three times, but it's the
22 last time.

23 A. Yes, I repeat it, yes, he did say it to me.

24 Q. Did you report this overture from Dr. Guerra to any
25 authorities?

DAMLCHE3

Callejas - cross

1 A. I'd like you to specify what time period your question
2 refers to.

3 Q. Within a month or two of receiving this overture from
4 Dr. Guerra.

5 A. During the ten years that the case has been pending in
6 Ecuador, we have received multiple offers of miraculous
7 arrangements to solve the case, to resolve the case from many
8 different sources. So in this case, this was one more of the
9 many offers that we received and I did not report this.

10 Q. Did you report --

11 A. I did not report this offer to fix the case.

12 Q. Did you report any of the offers you received over the
13 years to fix the case to the authorities?

14 MR. MASTRO: Your Honor, I object to the form.

15 THE COURT: Sustained.

16 What he said was miraculous arrangements to resolve
17 the case. He didn't say there were other offers to fix it.
18 Now, for all I know it was voodoo. I mean I don't have any
19 idea.

20 Q. Did you report any of the miraculous offers you received
21 over the years with regard to the case?

22 MR. MASTRO: Objection to form, your Honor.

23 THE COURT: Overruled.

24 A. At least in Ecuador, there are constantly lawyers that
25 contact other lawyers to offer to make arrangements to resolve

DAMLCHE3

Callejas - cross

1 the situation in a case. So there was nothing to report. This
2 was just another offer to fix a case.

3 Q. Would you look at paragraph 6 of Exhibit 99, please, it's
4 on page 4.

5 Did you believe that what you are reporting here in
6 paragraph 6 was another miraculous offer as you've used the
7 term?

8 A. No. This was a concrete offer that we participate in the
9 preparation of the judgment, something that is illegal.

10 Q. Did you report this to the authorities at the time?

11 A. This offer was made by someone who was not the judge on the
12 case but rather a former judge.

13 THE COURT: Did you report.

14 A. And for that reason, I did not report it to the authorities
15 at the time.

16 Q. In mid-October did you also receive a call from someone who
17 said that she could arrange a meeting with you and Judge
18 Zambrano?

19 A. Yes. In early October, in the first part of October 2009,
20 I did receive a phone call from someone who told me that, like
21 you say, she could arrange a meeting with Judge Zambrano.

22 Q. Did you report that information to the authorities?

23 A. I did not. And if the Court would allow me, I'd like to
24 explain the reasons why I did not.

25 THE COURT: Your lawyer can ask you on redirect unless

DAMLCHE3

Callejas - cross

1 Mr. Friedman asks you.

2 MS. FRIEDMAN: I'll ask, your Honor.

3 Q. Yes. Please tell us why not.

4 A. I was very mindful of what had happened when we had filed a
5 report regarding the illegal activities of Judge Juan Nunez.
6 Not only was Judge Nunez not sanctioned in spite of the fact
7 that he acted as a judge in a case in which that was not
8 proper, but he is today still the president of the provincial
9 court of Sucumbios Province, something that I consider to be a
10 shame for the Ecuadorian judiciary.

11 Instead of having Judge Nunez investigated, somehow
12 the plaintiffs managed to have an investigation done of me and
13 of Dr. Rodrigo Perez, as if we had somehow had something to do
14 with those facts.

15 And also there was no recording of the phone call. So
16 the only thing that I would have been able to report to the
17 authorities was that I had received a phone call, and the other
18 person could have said that never happened. And the
19 possibility was there that I be charged with having or that I
20 be accused of having infringed on their honor and reputation.

21 I was also aware or mindful of the efforts that for
22 several years the plaintiffs in the Lago Agrio case had caused
23 to happen for the prosecutor to bring sham charges against my
24 colleagues, lawyers Ricardo Veiga and Rodrigo Perez, efforts
25 which culminated in 2010 and which the plaintiffs from their

DAMLCHE3

Callejas - cross

1 own internal correspondence or communications sought to hide
2 the fact that they had been involved in those charges being
3 brought.

4 MS. FRIEDMAN: Your Honor, I'll move to strike the
5 last part of the answer as being unresponsive, also as hearsay
6 and also as dealing with a topic that the Court has ruled out
7 of the case.

8 MR. MASTRO: Your Honor, I think except as to the part
9 where the witness refers to plaintiff's own internal
10 correspondence or communications, everything else was his
11 contemporaneous thinking about why he acted the way he did that
12 Mr. Friedman elicited from the witness. He elicited this
13 testimony why he did or didn't take a certain action. The
14 witness has explained exactly why based on what was happening
15 contemporaneously at the time.

16 The only part of the answer that may or may not be
17 contemporaneous is the part about the at the very end about
18 internal work product. Even that may have been contemporaneous
19 based on the discovery that was occurring in 2010.

20 THE COURT: Mr. Friedman.

21 MS. FRIEDMAN: Your Honor, I think it does go to his
22 state of mind and I did elicit that. If the Court will limit
23 its consideration to this as going to his state of mind and not
24 for the truth of anything that's said, I don't have a problem
25 with that.

DAMLCHE3

Callejas - cross

1 THE COURT: I don't think we really have any
2 disagreement. You asked him why he didn't report it and he
3 told you. And I think it's quite likely that the last tag line
4 on his answer about internal communications postdates his
5 contemporaneous understanding. And to the extent that that's
6 true, I'm certainly not going to consider it as explaining why
7 he did or didn't do things several years ago. As to the rest
8 of it, it just goes to why he didn't report it. So I think we
9 agree.

10 MS. FRIEDMAN: Thank you, your Honor.

11 Your Honor, I'd like to hand the witness what's been
12 marked as DX101.

13 Q. Mr. Callejas, you not only didn't -- let me start over.

14 Mr. Callejas, is this an agreement you entered into
15 with Chevron to keep the overtures regarding fixing the case
16 confidential and private?

17 THE COURT: Well, you built into the question the
18 content of the document. I have no doubt that the content of
19 the document will be admitted, at least that's my assumption.
20 The unfortunate part of it is that I don't believe you've built
21 it in accurately.

22 MS. FRIEDMAN: I'll just ask this.

23 THE COURT: Why don't we take it one step at a time.

24 Q. Mr. Callejas.

25 MR. MASTRO: Your Honor, there's also a question of

DAMLCHE3

Callejas - cross

1 the confidential designation on the document.

2 THE COURT: Well, let's deal with one step at a time.
3 Let's see if it's coming into evidence, as I imagine it will.

4 Q. Mr. Callejas, did you sign this agreement with Chevron
5 corporation on or about October 16 of 2009?

6 A. First thing I'd like to refer to the fact that you made
7 mention of earlier that this document references overtures to
8 fix the case. That's not true. By the time of this date, we
9 had only heard that the judgment was soon to be issued by Judge
10 Zambrano.

11 Q. Mr. Callejas is this an agreement --

12 A. And, yes, I did sign this document on the 16th of October
13 of 2009.

14 MS. FRIEDMAN: And, your Honor, I'd move for admission
15 of DX101.

16 THE COURT: Any reason why it shouldn't be admitted?

17 MR. MASTRO: None, your Honor.

18 THE COURT: It's received.

19 (Defendant's Exhibit 101 received in evidence)

20 Q. And you and Mr. Racines also signed declarations relating
21 to the overtures you'd received; is that correct?

22 A. That is true, yes.

23 Q. Who is it that signed this agreement for Chevron
24 corporation?

25 A. This agreement was signed by Mr. Ricardo Veiga.

DAMLCHE3

Callejas - cross

1 Q. Did you sign other declarations about offers to fix the
2 case during the time you handled the Lago Agrio case?

3 MR. MASTRO: Objection to form and mischaracterizes
4 the prior testimony.

5 THE COURT: Sustained. Try again, Mr. Friedman,
6 please.

7 Q. Mr. Callejas, in this document there is reference to you
8 signing declarations about overtures that were made.

9 THE COURT: There really isn't any need for you to try
10 to rephrase what the agreement is about in your question.

11 MS. FRIEDMAN: I think that's right, your Honor. I'll
12 move on.

13 Q. Were there any other agreements to keep -- I'm sorry. Let
14 me start over.

15 Did you enter into any agreements besides this one to
16 keep Mr. Guerra's overtures confidential?

17 MR. MASTRO: Objection, your Honor.

18 THE COURT: Sustained. This agreement is an agreement
19 by Chevron to keep confidential the declarations the witness
20 and Mr. Racines signed, not an agreement by them to keep
21 anything confidential. I take it you don't disagree with my --

22 MS. FRIEDMAN: I'm just going to come at it a
23 different way, your Honor.

24 Q. I'd like to hand the witness Exhibit 102, DX102.

25 Is this a authorization that you and Mr. Racines

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Callejas - cross

1 signed on or about December 7th of 2012?

2 A. Yes, it is, counsel.

3 Q. If you look at the third paragraph of the document --

4 THE COURT: Are you offering it?

5 MS. FRIEDMAN: I could. Sure. I'll offer DX102.

6 THE COURT: I'm not trying to force you to do
7 anything.

8 MR. MASTRO: No objection, your Honor.

9 THE COURT: Are you offering it?

10 MS. FRIEDMAN: I was not planning to offer it.

11 MR. MASTRO: Your Honor, I think if he's going to
12 question on the content of the document, it should be received.

13 MS. FRIEDMAN: That's fine. I'll offer the document,
14 your Honor.

15 THE COURT: Received.

16 (Defendant's Exhibit 102 received in evidence)

17 Q. Third paragraph, Mr. Callejas, there is reference to you
18 and Mr. Racines stating that Chevron corporation may now use
19 and otherwise disclose the October 16, 2009 Callejas
20 declaration, the October 16, 2009 Racines declaration, as well
21 as any other declarations they've signed at the request of
22 Chevron corporation.

23 Do you see that?

24 THE COURT: I'm sure he sees it. Next question.

25 Q. Can you tell us what other declarations you signed at the

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Callejas - cross

1 request of Chevron corporation that were subject to
2 restrictions regarding confidentiality?

3 THE COURT: If any.

4 Q. If any.

5 A. Under the oath that I have taken I can state to you that I
6 have not signed any other declaration that was treated as
7 confidential by the Chevron corporation.

8 Q. I want to ask you about the section of your witness
9 declaration that begins at paragraph 73.

10 THE COURT: Plaintiff's 4300.

11 Q. Mr. Callejas, if you look at paragraph 74, you talk about
12 different judges being substituted on and off the appellate
13 panel.

14 Did some of those judges take themselves off the panel
15 because they had been involved in the case at the trial level?

16 A. No, they did not.

17 Q. You reference that there were two changes in the panel
18 composition affected by lottery. That is the process by which
19 appellate judges are ordinarily replaced if a judge is unable
20 to serve for one reason or another.

21 Is that true?

22 A. In effect, that is what the law provides, that it must be
23 through a rotation -- through a public lottery system that is
24 provided under the general rules governing judicial function.

25 Q. Do you have personal knowledge of how those lotteries were

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Callejas - cross

1 held in this case?

2 THE COURT: If they were held.

3 Q. If they were held.

4 A. The so-called lotteries were done without the parties'
5 participation and presided over by Judge Zambrano, whose
6 judgment or whose ruling was to be reviewed by those same
7 judges.

8 Q. In paragraph 75 you say that Chevron had the right to be
9 present at the lottery.

10 Can you point us to a statute or law that says that?

11 THE COURT: Look, I'm going to take the answer but you
12 understand that starting in 2011, I more than once told the
13 parties that if they intended to rely on any provision of
14 foreign law, they were to identify it and provide the Court
15 with substantiation and the materials necessary for me to
16 decide what the law is. I know you are aware under Rule 44 the
17 determination of issues of foreign law is a question of law for
18 the judge. It is not a matter of fact to be proved through
19 evidence.

20 Nonetheless, I'll allow the witness to answer for
21 whatever it's worth.

22 MS. FRIEDMAN: Thank you, your Honor.

23 THE COURT: And I said Rule 44. I meant 44.1.

24 THE WITNESS: Please, counsel, could you repeat your
25 question.

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Callejas - cross

1 Q. Yes. I'm referring to paragraph 75 of your witness
2 statement, and about halfway through you say that Chevron had
3 the right to be present at the lotteries. I'm asking whether
4 you can point us to a statute or a law that gave the parties
5 the right to be present.

6 A. Yes. The constitution of the Republic of Ecuador
7 establishes in Article 76, if I'm not mistaken, that all
8 judicial proceedings must be public. And what proceeding, what
9 judicial proceeding could be more important than the proceeding
10 in which judges are designated to hear a case.

11 However, in this case all we received was a
12 notification that the lottery had been held under the
13 president -- under the presidency of the court of Judge
14 Zambrano and that was signed, that ruling was signed by Judge
15 Zambrano himself.

16 Q. I want to change subjects now and ask if you would turn to
17 paragraph 85 of your declaration.

18 THE COURT: Excuse me, just before you do, does either
19 side intend to offer this notice or any other court record on
20 this point?

21 MS. FRIEDMAN: It was the lottery you're talking
22 about?

23 THE COURT: The fact that it was under Judge Zambrano.

24 MS. FRIEDMAN: They've been marked in the deposition
25 we took in the last few days.

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Callejas - cross

1 THE COURT: Is it on anybody's exhibit list?

2 MS. FRIEDMAN: Yes.

3 MR. MASTRO: We'll make sure to add it to ours, your
4 Honor, to the extent anything relevant isn't on it.

5 THE COURT: All right. Let's go on.

6 Q. If we could go to paragraph 85 of your declaration,
7 Mr. Callejas, has Chevron ever done business in Ecuador?

8 A. As far as I know, Chevron has had businesses in Ecuador.

9 Q. Does it have any property in Ecuador?

10 A. As far as I know, Chevron has no real estate properties in
11 Ecuador.

12 Q. And is Chevron IP a corporation separate from Chevron?

13 MR. MASTRO: Objection, your Honor. Calls for a legal
14 conclusion.

15 MS. FRIEDMAN: I don't know, your Honor. This is --

16 THE COURT: This is relevant because?

17 MS. FRIEDMAN: I don't know. I asked you to strike
18 this.

19 THE COURT: We're on what paragraph?

20 MS. FRIEDMAN: We're on 84 through 86, your Honor.
21 Kind of the embargo, the intellectual property material.

22 I just looked, your Honor. I did not ask you to
23 strike this.

24 MR. MASTRO: Did not ask to strike it. And I can
25 explain why it's relevant. It does speak for itself why it's

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Callejas - cross

1 relevant, your Honor.

2 THE COURT: You're going to tell me it's relevant to
3 this unjust enrichment claim you'd like to put back in the
4 case; is that right?

5 MR. MASTRO: Absolutely, your Honor.

6 THE COURT: If and when it comes back in the case,
7 we'll worry about it.

8 MR. MASTRO: Thank, your Honor. It also goes to the
9 fact that Chevron has been harmed by the Ecuadorian judgment --

10 THE COURT: The existence of which is a matter of
11 public record.

12 Could we go on, as we move into hour four of the
13 one-hour cross-examination.

14 MS. FRIEDMAN: Your Honor, could I ask, what I need to
15 know is if we're trying an unjust enrichment case.

16 THE COURT: You'll find out in due course.

17 MS. FRIEDMAN: All right. Then I'd like to ask that
18 84 through 86 be stricken.

19 THE COURT: Take it under consideration. Move on,
20 please.

21 MS. FRIEDMAN: Am I allowed to ask questions about 84
22 to 86?

23 THE COURT: Not now.

24 MR. GOMEZ: Your Honor, may I be heard?

25 THE COURT: Yes.

DAMLCHE3

Callejas - cross

1 MR. GOMEZ: The problem with reserving a ruling on
2 this, your Honor, is that once the witness leaves and your
3 Honor decides to keep 84 through 86 --

4 THE COURT: You're making an assumption.

5 MR. GOMEZ: -- there's no way to do that.

6 THE COURT: That's not true at all. If I tell him to
7 come back, you can be sure he'll be back.

8 MR. MASTRO: He will be, your Honor.

9 BY MS. FRIEDMAN:

10 Q. If you would turn to paragraph 99 of your witness
11 statement, Mr. Callejas.

12 Can you tell us for what purpose you put in this
13 reference to the Catholic church in your witness statement?

14 A. I am somebody who professes a Catholic faith and I believe
15 that the church should not be involved in a case such as Lago
16 Agrio case and much less in the case that is being heard in
17 Judge Kaplan's courtroom.

18 MS. FRIEDMAN: Your Honor, could I ask to strike 99?

19 THE COURT: Just move on.

20 MS. FRIEDMAN: All right.

21 Your Honor, I just want to be sure that the appellate
22 decision PX430 and appellate clarification PX431 had been moved
23 and admitted into evidence.

24 MR. MASTRO: No objection as long as not for the truth
25 of the matters asserted.

DAMLCHE3

Callejas - cross

1 THE COURT: If they're not in previously, and I think
2 at least one and probably both are, they are now and not for
3 the truth of the matters asserted.

4 (Plaintiff's Exhibit 430, 431 received in evidence)

5 MS. FRIEDMAN: That's all the questions I have, your
6 Honor. Thank you.

7 THE COURT: All right. Thank you.

8 Now, Mr. Gomez, you are still talking about two hours?

9 MR. GOMEZ: Well, your Honor, I don't want to commit.

10 THE COURT: Well, yeah, I can see that at this point.

11 MR. GOMEZ: At this point I think we should just get
12 started, but I think I will exceed the two-hour mark. I think
13 there are a lot of questions raised by his testimony that we've
14 heard so far this morning and I'd like to probe those areas
15 adequately.

16 THE COURT: We're going to break for lunch until
17 2 o'clock at this point. And I suggest you review your notes
18 carefully, Mr. Gomez, because I consider a great deal of the
19 time taken this morning has been unproductive.

20 (Luncheon recess)
21
22
23
24
25

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Callejas - cross

AFTERNOON SESSION

2:00 p.m.

THE COURT: Before we resume, this is not a ruling. I will make a ruling in due course. But I think counsel should assume that the unjust enrichment issue is not coming back into this case, at least at this point, that is to say during this trial.

Mr. Gomez.

MR. GOMEZ: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. GOMEZ:

Q. Good afternoon, Dr. Callejas.

A. How are you, counsel Gomez?

Q. Good. Thanks.

Dr. Callejas, you are personally paid \$33,000 a month to represent Chevron, are you not?

MR. MASTRO: Objection. This was confidential in his deposition, and we alerted defense counsel of this before, his compensation levels. So I am surprised to see this question come in.

THE COURT: It's appropriate cross-examination.

THE WITNESS: May I answer it?

THE COURT: Yes.

A. Yes, sir, that's correct.

Q. Is it fair to say that in some months you received at least

DAM8CHE4

Callejas - cross

1 90 percent of your income from Chevron?

2 A. I believe I had stated this to you in the deposition in May
3 that I had not calculated the percentage, but that the amount
4 would fluctuate in certain months.

5 Q. Is it correct that in some months you earn as much as 90
6 percent of your income from Chevron?

7 A. Once again, I have not calculated it, but I am assuming
8 that it could be; I assume that it could be.

9 Q. Each of your associates earns, approximately, between 10
10 and \$15,000 per month to represent Chevron, isn't that correct?

11 A. The attorneys who work with me receive an amount that is
12 between the range that you have stated, yes.

13 Q. In fact, the Lago Agrio litigation has been the most
14 lucrative case in your law practice, isn't that correct, sir?

15 A. I can tell you that more than 80 percent of my estate was
16 acquired before 2003 during my more than 30 years of
17 professional experience.

18 Q. Since 2003, has the Lago Agrio litigation been the most
19 lucrative case in your law practice, sir?

20 A. It has been a lucrative case, yes.

21 Q. I didn't hear that.

22 A. It has been a lucrative case, yes.

23 Q. Has it been the most lucrative case in your law practice,
24 sir, yes or no?

25 A. As an individual case, yes, it has been.

DAM8CHE4

Callejas - cross

1 Q. Can you estimate the total amount of fees that you, sir,
2 have been paid to represent Chevron since the lawsuit was filed
3 in 2003?

4 MR. MASTRO: Your Honor, there is an objection, and it
5 relates to the confidentiality that the witness has asked us to
6 claim with regard to this information. It's not that the Court
7 shouldn't hear this information; it's the confidentiality of
8 it.

9 THE COURT: The point of the examination is that this
10 case has been financially very important to the witness, and
11 thus, gives him arguably an interest in the outcome. I have
12 the point. I think you have established it. Now let's move
13 on.

14 MR. MASTRO: Thank you, your Honor.

15 Q. Dr. Callejas, I would like to refer your attention to your
16 direct written testimony, Exhibit 4300. Do you have it in
17 front of you?

18 A. I have it here now, yes.

19 Q. Sir, how did you prepare your written testimony?

20 A. During several weeks I have met with attorneys from Chevron
21 to whom I have related various experiences that I had as the
22 lead attorney handling the Maria Aquinda lawsuit in the
23 Provincial Court of Justice of Sucumbios in the Republic of
24 Ecuador.

25 Q. Please estimate for me how many --

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Callejas - cross

1 A. I have not finished.

2 THE COURT: He is not finished.

3 Q. I'm sorry.

4 A. As a result of that information, we were preparing the
5 document that I ended up signing in the city on October 9th of
6 2013.

7 Q. How many weeks did you spend working on this written direct
8 testimony as you have described?

9 A. I recall having come to the United States on at least three
10 occasions to do so.

11 Q. What was the date of the first occasion?

12 A. It must have been at the beginning of the month of
13 September of 2013. I don't recall the exact date.

14 Q. When was the second occasion, approximately?

15 A. The second occasion must have been toward the end of
16 September of 2013.

17 Q. When was the third occasion, approximately?

18 A. The third occasion was last week.

19 Q. How many total days did you work on your written
20 declaration on or about September 1, 2013?

21 THE COURT: Are you asking how many 24-hour
22 consecutive periods he worked on it, or are you asking him on
23 how many different days he did something on it, or something
24 else?

25 MR. GOMEZ: The latter. Thank you.

DAM8CHE4

Callejas - cross

1 Q. Dr. Callejas, on how many different days did you work on
2 your written declaration on or about September 1, 2013?

3 A. I worked on that subject, it must have been 10 or 12 days.

4 Q. How many days did you work on your written declaration on
5 or about the end of September 2013?

6 A. It seems to me that towards the end of September it was
7 four days.

8 Q. On the third occasion, on how many different days did you
9 work on your written declaration, sir?

10 A. I told you before there was a third occasion, it was last
11 week. But prior to that, there was another occasion, it was
12 towards the beginning of October, and on that occasion, I
13 worked on the declaration on five consecutive days.

14 Q. You testified that you related diverse experiences to other
15 attorneys as the initial step towards preparing your written
16 direct testimony. Did you dictate this material to attorneys,
17 is that how it worked?

18 A. I don't know if I may be revealing privileged information,
19 but at the beginning in September, I was not dictating
20 information, but I was being prepared for testimony; I was not
21 dictating, but telling them what was happening based on
22 questions they were asking me.

23 Q. Dr. Callejas, did you yourself draft the language in
24 Exhibit 4300?

25 A. Many of the words that appear there are words that I said

DAM8CHE4

Callejas - cross

1 during our meetings during the months of September and October
2 of 2013.

3 Q. Who reduced your words into writing, you or someone else?

4 A. I am not someone who can write competently on a computer so
5 it was somebody else who did it for me.

6 Q. Who?

7 A. I have no personal knowledge regarding that.

8 Q. Do you know if the person was an attorney or not an
9 attorney?

10 A. I don't have personal knowledge regarding that.

11 Q. Who gave you a written draft of Exhibit 4300, sir?

12 A. Could you please repeat it?

13 Q. Who gave you a written draft of Exhibit 4300, sir?

14 A. It was always provided to me by an attorney who was working
15 with me, first in preparing my testimony and then also in
16 preparing my affidavit.

17 Q. What is the name of that attorney?

18 A. His name is Robert Blume.

19 Q. Once you were provided with a draft of Exhibit 4300, did
20 you review it?

21 A. I reviewed not only the draft, but also the contents of the
22 English document alongside an interpreter who always worked
23 with me the whole time.

24 Q. So the initial draft that you reviewed was in English,
25 correct?

DAM8CHE4

Callejas - cross

1 A. That's correct.

2 Q. You were never provided a Spanish written translation of
3 Exhibit 4300 or any of its draft, is that correct?

4 A. As I stated in my statement, I feel rather comfortable
5 reading the English language, and therefore I didn't feel it
6 was necessary to put it down in the Spanish language.

7 Q. Nevertheless, you relied on a translator to translate the
8 English written version of Exhibit 4300 for you to understand
9 it, isn't that correct?

10 A. Yes. I wanted to make sure that I knew the meaning of each
11 word, because sometimes when I read the English language, there
12 are certain words whose meaning I do not know, and sometimes I
13 have to use a dictionary. Also, I didn't want to assume the
14 general meaning of any word that's in the document. In order
15 to avoid that, I wanted to know the meaning of the words.

16 Q. How did you do that?

17 A. As I told you earlier, that was done through a translator,
18 and also with using one of the attorneys who works with me who
19 speak both English and Spanish.

20 Q. Did you mark up the initial draft in English that you
21 reviewed?

22 A. We reviewed the document paragraph by paragraph. As it
23 became necessary, I would ask questions. We would add things
24 or delete things that it being necessary for me to make any
25 markings on the draft.

DAM8CHE4

Callejas - cross

1 Q. Who was responsible for revising the document according to
2 your edits?

3 A. I don't have personal knowledge about that, but I always
4 worked with attorney Blume, who I mentioned, regarding this.

5 Q. Did you review Exhibit 4300 after you had asked for changes
6 to be made to it?

7 A. Of course, yes. Whenever there was a change made, I asked
8 to review the text to make sure that it was the words as I
9 defined them for this statement.

10 THE COURT: Mr. Gomez, are you near the end of this
11 line of examination?

12 MR. GOMEZ: Yes.

13 THE COURT: How close are you?

14 MR. GOMEZ: I am done, your Honor.

15 THE COURT: Thank you.

16 Q. Let's go through your testimony in more detail, sir.

17 Dr. Callejas, I would like to direct your attention to
18 paragraph 22 of your written testimony.

19 A. 22 you said?

20 Q. Yes. Paragraph 22.

21 According to your written testimony, you state, "At no
22 time did I or any member of my team provide documents or
23 evidence to a judge presiding over the Lago Agrio litigation
24 outside the procedures set forth by law."

25 A. That's correct. That's what the first sentence of the

DAM8CHE4

Callejas - cross

1 paragraph states.

2 Q. My question to you, sir, is, what procedure are you
3 referring to in that statement?

4 A. I am referring to the fact that, according to Ecuadorian
5 law, any party who may want to submit a document to be included
6 in the record must file a motion before the judge who must rule
7 on whether or not the document will be incorporated into the
8 record. Or, also, during judicial inspections, the parties
9 were authorized to read or to use certain documents, which
10 would then be submitted to the judge, and he later, through a
11 written order, would annex them to the record.

12 Q. You attended many of the judicial inspections, correct?

13 A. Yes. That's correct.

14 Q. During those judicial inspections, were there occasions
15 when you would read from documents to the judge, as you have
16 described was the procedure?

17 A. They allowed the parties to read or use documents
18 pertaining to the site that is being inspected, and those would
19 later be turned over to the judge in order for the judge to
20 attach them to the record. And I did that during several
21 judicial inspections.

22 Q. Did you observe the plaintiffs' attorneys also do the same
23 thing during the judicial inspections that you attended?

24 A. Yes. I did see that on the inspections when I attended,
25 and if they submitted those documents to the judge, those

DAM8CHE4

Callejas - cross

1 should have been specifically identified in the record after
2 the judge received those documents and issued an order annexing
3 them to the record.

4 Q. Did you observe the plaintiffs' attorneys giving documents
5 to judges overseeing the judicial inspections in the Lago Agrio
6 case?

7 A. I observed on occasions they gave the judge aerial
8 photographs of the site that was being inspected.

9 Q. Did you ever see the plaintiffs' attorneys give judges at
10 judicial inspections briefs or legal arguments?

11 THE COURT: You are referring to documents, is that
12 right?

13 MR. GOMEZ: Yes.

14 MR. MASTRO: Objection to form. It's compound. And
15 he has already answered the question about what he saw at
16 judicial inspections.

17 THE COURT: I will sustain it as to form.

18 Q. Dr. Callejas, did you observe during judicial inspections
19 the plaintiffs' attorneys give documents to judges presiding
20 over those inspections which contained legal arguments?

21 MR. MASTRO: Objection. Asked and answered.

22 THE COURT: I think the question is better put this
23 way.

24 Dr. Callejas, did you ever see the plaintiffs' lawyers
25 at a judicial inspection hand to the judge any documents other

DAM8CHE4

Callejas - cross

1 than aerial photographs?

2 THE WITNESS: I don't recall specifically that that
3 may have happened.

4 Q. Dr. Callejas, whose responsibility was it upon the judge
5 receiving documents from a party at judicial inspections to
6 enter them into the record and into the acta for that judicial
7 inspection?

8 A. The responsibility was the judge's, who had to order that
9 the documents be numbered and to be annexed to the record of
10 the inspection.

11 Q. Are you aware of instances where documents handed to the
12 judge by a party at a judicial inspection were lost or
13 misplaced?

14 THE COURT: In this case?

15 MR. GOMEZ: Yes.

16 A. I recall only that a video, which was in a DVD format, did
17 not appear on the record even though it was mentioned by the
18 judge in the acta.

19 Q. Which party submitted that DVD which is the subject of your
20 recollection?

21 A. It was done by the plaintiffs.

22 THE INTERPRETER: I'm sorry. Strike it.

23 A. It was done by the defendant.

24 THE INTERPRETER: Interpreter's correction.

25 Q. Dr. Callejas, are you familiar with a document in this case

DAM8CHE4

Callejas - cross

1 that is referred to as the Fusion memo?

2 A. Yes. I read about it, and I have mentioned it in some
3 arguments that I filed in Ecuadorian courts.

4 Q. Have you filed a copy of the Fusion memo in an Ecuadorian
5 court proceeding?

6 MR. MASTRO: Objection, your Honor. Objection to the
7 form and the record will speak for itself as to whether copies
8 were filed, and if it has, the record speaks for itself as to
9 when that would have been.

10 THE COURT: Focus on time period, counsel.

11 MR. GOMEZ: I will withdraw that question, your Honor.

12 Q. Dr. Callejas, did the plaintiffs ever provide a judge at a
13 judicial inspection a copy of the Fusion memo?

14 A. As background to my answer, I must say that it is not
15 permissible to submit written arguments during the judicial
16 inspections. The documents that are permissible to be
17 submitted are press releases or information, aerial
18 photographs, property deeds, but not internal writings or
19 arguments, nor work product. And any document that was
20 submitted must be included in the acta or certificate, and it
21 must be ordered that it be made part of the record.

22 And I don't recall that any document such as the one
23 you mentioned was submitted by any of the parties during any of
24 the judicial inspections in which I was present, nor have I
25 found mention of the document to which you refer in any of the

DAM8CHE4

Callejas - cross

1 actas or the certificates or the judicial inspections which I
2 have read.

3 Q. Dr. Callejas, are you aware that the exhibits to the Fusion
4 memo appear in acta for a judicial inspection in the Lago Agrio
5 case?

6 A. I am not aware that that's true.

7 Q. Did Chevron ever submit written legal argument to judges at
8 judicial inspections in the Lago Agrio case?

9 A. We didn't do so because legal arguments during judicial
10 inspections must be made orally, and then recorded, and then
11 transcribed on to the acta or certificate.

12 THE COURT: Mr. Callejas, this will all be much more
13 efficient if you would simply answer the question. I
14 understand your answer to the question to be no. For whatever
15 reason, it's no.

16 THE WITNESS: I will do so, your Honor.

17 Q. Mr. Callejas, referring you back to your written testimony,
18 paragraph 22, you state, "My team certainly never left
19 documents related to the case at the door of any judge of the
20 Lago Agrio court."

21 To whom are you referring by the term "my team" in
22 this particular statement?

23 A. I am referring to the attorneys that worked with me in the
24 Lago Agrio case.

25 Q. What is your basis for saying that the attorneys who worked

DAM8CHE4

Callejas - cross

1 with you never left documents related to the case at the door
2 of any judge of the Lago Agrio court?

3 A. Once again, I am referring to what I already said to
4 attorney Friedman this morning. Any action taken by the
5 attorneys in Lago Agrio had to be reported to me, and that has
6 been a rule since the beginning. And it was never reported to
7 me that that ever happened, ever.

8 Q. Is that your only basis?

9 A. Yes. Because I haven't been for 24 hours a day, seven days
10 a week, at the door of the judge to know if that happened or
11 not.

12 Q. Did you ever ask all of the attorneys who worked for you
13 whether they ever left documents related to the case at the
14 door of any judge of the Lago Agrio court, sir?

15 A. Yes, I did. When I read a declaration from Judge Zambrano,
16 who said something to that effect, and they all replied to me
17 that they had never done so.

18 Q. Did Chevron have private investigator -- let me withdraw
19 that.

20 Sir, did Chevron have agents stationed at the Lago
21 Agrio court during the pendency of the Lago Agrio case?

22 A. The attorneys who work with me have taken turns to be at
23 the Lago Agrio court, but the least time possible and only the
24 time necessary to fulfill their work obligations, chiefly for
25 reasons of security.

DAM8CHE4

Callejas - cross

1 Q. Other than what you have just described, has Chevron had
2 any agents stationed throughout the day at the Lago Agrio court
3 during the pendency of the Lago Agrio case?

4 MR. MASTRO: Objection. Asked and answered, your
5 Honor.

6 THE COURT: Overruled.

7 A. As the attorney responsible for the case, I never had any
8 agents assigned on a permanent basis to the Lago Agrio court
9 other than the lawyers who went there accompanied by security
10 personnel.

11 Q. Sir, do you know whether Chevron hired any agents not
12 working through you who were stationed at the Lago Agrio court
13 during the Lago Agrio case?

14 MR. MASTRO: Objection, your Honor. Attorney-client
15 and work product.

16 THE COURT: Sustained. We have been up and down this
17 mountain quite a few times.

18 Q. Dr. Callejas, do you know whether anyone working for
19 Chevron, other than the attorneys or personnel under your
20 direct supervision, left documents related to the case at the
21 door of any judge of the Lago Agrio court?

22 A. I am not aware that that ever happened.

23 Q. Did you ever ask your client whether they had persons or
24 had hired persons to leave documents related to the case at the
25 door of any judge of the Lago Agrio court?

DAM8CHE4

Callejas - cross

1 MR. MASTRO: Objection, your Honor.

2 THE COURT: Sustained.

3 Q. Sir, I would like to direct your attention to paragraph 27
4 of your written testimony.

5 Paragraph 27 states, "I recall that the Lago Agrio
6 plaintiffs' representatives organized a hostile group of
7 protesters outside the courthouse on the day of the
8 conciliation hearing."

9 My question to you, sir, to whom are you referring by
10 your reference to "Lago Agrio plaintiffs' representatives" in
11 that statement?

12 A. I remember personally having seen and having seen
13 photographs of Mr. Luis Yanza, as well as Mr. Steven Donziger
14 here present, at those demonstrations.

15 Q. Were you present at the protest outside the courthouse on
16 the day of the conciliation hearing that you referred to in
17 your testimony, sir?

18 A. Yes. At the time that we went into court, the
19 demonstration was already underway. So we had to quickly move
20 through, but I was able to observe what I already stated. And,
21 also, from a window and terrace in the building of the
22 courthouse we were able to observe the demonstration. And at
23 nearly all times we were able to hear what was being said and
24 shouted at that demonstration.

25 Q. Is it your testimony, sir, that Luis Yanza and Steven

DAM8CHE4

Callejas - cross

1 Donziger organized this protest, or were merely present?

2 A. It's an assumption that I can make by the way that Luis
3 Yanza and Steven Donziger addressed and interacted with the
4 persons who were present at that demonstration.

5 Q. Did you ever ask Mr. Yanza or Mr. Donziger if they
6 organized this protest?

7 THE COURT: Let's take a little time here for a
8 change. Mr. Yanza can come and tell us. So can Mr. Donziger.
9 Let's get on with it.

10 My assumption is the witness doesn't know.

11 MR. GOMEZ: Would Chevron stipulate to that, your
12 Honor?

13 THE COURT: Just a minute, Mr. Callejas.

14 Mr. Mastro.

15 MR. MASTRO: Your Honor, his testimony is based on
16 what he observed that day. So he knows what he observed, and
17 he observed those persons acting in a certain way.

18 THE COURT: So you're stipulating that apart from his
19 observations on that day, he has no personal knowledge, is that
20 correct?

21 MR. MASTRO: That is correct, your Honor.

22 THE COURT: Move on, counsel.

23 BY MR. GOMEZ:

24 Q. Dr. Callejas, is it true that people in Ecuador have a
25 right to protest?

DAM8CHE4

Callejas - cross

1 THE COURT: Sustained.

2 We are finishing at 4:30, Mr. Gomez, whether you're
3 done or not. Use time a little bit better. You spent between
4 30 and 40 minutes on how the statement was prepared, when the
5 way that would have been done in any circumstance, in any other
6 case, would have been to ask the witness whether he wrote out
7 all the words, received in the answer no, which is almost
8 always the case, and then would have asked the witness, have
9 you reviewed it, have you reviewed it carefully, is everything
10 in there true or not? And that would have been the end of it,
11 in about as much time as it has taken for me to tell what I
12 would have said. Hundreds and hundreds of trials are conducted
13 that way. You took 30 or 40 minutes. Now let's move on.

14 Of course, you should be aware that the responsibility
15 for this little bit of time wasting was not yours alone, it was
16 Mr. Mastro's equally, because he left this dumb paragraph in
17 the statement, after I asked that everything not based on
18 personal knowledge be deleted. But neither side has the
19 ability to focus on anything at the heart of the case, except
20 on occasions, but instead is off in every direction where they
21 think they can get a dig in at the other side, whether it's
22 based on personal knowledge or not.

23 Let's get on with it. There are serious issues, there
24 are people who actually know things about the allegations, and
25 let's focus on the evidence.

DAM8CHE4

Callejas - cross

1 BY MR. GOMEZ:

2 Q. Dr. Callejas, did anyone participating in this protest
3 threaten you directly that day?

4 A. No, they did not.

5 Q. Did anyone participating in this protest attempt to
6 intimidate you, sir?

7 THE COURT: That depends on the subjective intention
8 of the people involved in the behavior. Get on with it.

9 MR. GOMEZ: I will rephrase it.

10 Q. Did any person participating in this protest that day
11 intimidate you, sir?

12 A. They didn't intimidate me, but I was worried because of the
13 presence of the number of people and the shouts that I heard
14 from the demonstration, who could not have been there had they
15 not been organized to do that.

16 Q. I direct your attention to paragraph 29 of your testimony.

17 In this paragraph, you make reference to "the initial
18 six-day evidentiary period."

19 What are you referring to, sir, in that statement?

20 I'm sorry. What do you mean by "initial six-day
21 evidentiary period" in that statement?

22 A. What I am referring to is that in proceedings that are
23 heard under the category of verbal summary proceedings, that is
24 the initial period of evidence at the outset of the case, which
25 lasts six working days, and during that period of time the

DAM8CHE4

Callejas - cross

1 parties are to present all of the -- indicate all of the
2 evidence that they intend to present during the trial.

3 Q. You mean the parties are supposed to identify the types of
4 evidence that they will present later in the proceeding to
5 prove their case?

6 A. I am referring to the fact that during those six days, they
7 are to present all of the documents that they have in their
8 possession ahead of time, all of the testimony of witnesses
9 that they intend to obtain and -- or --

10 THE INTERPRETER: The interpreter wants to inquire.

11 A. The statements of witnesses that they are presenting, as
12 well as judicial inspections that they intend to have.

13 Q. You state in paragraph 29 of your testimony that there were
14 requests for a total of 122 site inspections. And my question
15 to you, sir, is how many of those site inspections did Chevron
16 request?

17 MR. MASTRO: Your Honor, we will stipulate to the
18 numbers that are in the record. It's a matter of record.

19 THE COURT: Mr. Callejas, were the requests made in
20 writing?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And the written requests were filed with
23 the court, is that right?

24 THE WITNESS: That's correct.

25 THE COURT: Move on, Mr. Gomez.

DAM8CHE4

Callejas - cross

1 Q. Did the Ecuadorian plaintiffs request a global damages
2 expert be presented during the six-day evidentiary period, sir?

3 MR. MASTRO: It's also a matter of record, your Honor,
4 one way or the other.

5 THE COURT: I will take a yes or no.

6 A. Yes. They asked for that in writing during those six days.

7 Q. You testified that these six days took place at the outset
8 of the case. How soon after the case is filed did this six-day
9 evidentiary period take place?

10 MR. MASTRO: Objection. Also a matter of record, your
11 Honor.

12 THE COURT: I will hear it.

13 A. According to the statute, the evidentiary period begins on
14 the next working day following the day on which the answer to
15 the complaint -- the hearing in which the answer to the
16 complaint is heard.

17 (Continued on next page)

DAMLCHE5

Callejas - cross

1 BY MR. GOMEZ:

2 Q. And is it correct that Chevron did not propose to present a
3 global expert on damages during this six-day evidentiary
4 period, sir?

5 A. That's correct, Mr. Gomez.

6 Q. And isn't it correct that a party may only present evidence
7 that it identifies during this six-day evidentiary period, sir?

8 A. Evidence related to the merits of the case must -- may only
9 be presented during those six days.

10 Q. And is it fair to say, Dr. Callejas, if a party fails to
11 identify a type of evidence to present during those six days,
12 it is precluded later in the proceeding from presenting such
13 evidence?

14 THE COURT: Mr. Gomez, I've been allowing this as a
15 matter of convenience more than anything else. As I said
16 earlier in the day, you were repeatedly offered the opportunity
17 and indeed required to set forth whatever propositions of
18 Ecuadorian law or the laws of other nations upon which you
19 relied and to provide me with the necessary material. Whatever
20 you have submitted you have submitted. You're not turning this
21 witness or anybody else into an expert on Ecuadorian law. I
22 will let you know whether I want to take testimony on
23 Ecuadorian law and from whom under Rule 44.1, as I had
24 previously made abundantly clear.

25 MR. GOMEZ: Your Honor, may I get a yes or no answer

DAMLCHE5

Callejas - cross

1 to the last question?

2 THE COURT: No. Let's get on with it.

3 Q. Sir, directing your attention to paragraph 35 of your
4 written testimony, you state, quote, a separate judicial
5 proceeding in Quito, where the HAVOC laboratory was located, to
6 conduct a judicial inspection of the laboratories facilities --
7 I'm sorry. I read that improperly. Let me withdraw and try
8 again.

9 Sir, in paragraph 35 of your written testimony, you
10 state, we initiated a separate judicial proceeding in Quito,
11 where the HAVOC laboratory was located, to conduct a judicial
12 inspection of the laboratories facilities.

13 And my question to you, sir, is did you provide
14 plaintiffs' attorneys with notice that you had filed the
15 separate judicial proceeding in Quito to secure an inspection
16 of their laboratories?

17 A. The judicial inspection was based on a legal norm that
18 allows any party to request an inspection to obtain information
19 that is of interest to it. And we didn't notify the plaintiffs
20 in the Lago Agrio case because the matter was only in regards
21 to the HAVOC laboratory.

22 Q. Did you notify the Lago Agrio court that you were seeking
23 an order from a Quito court to inspect a laboratory that was
24 performing work for the Lago Agrio case at the time?

25 A. The court in Lago Agrio had no jurisdiction over the matter

DAMLCHE5

Callejas - cross

1 since for territorial reasons it was the court in Quito that
2 would hear that issue.

3 Q. So is your answer no, sir, you did not so notify the Lago
4 Agrio court?

5 A. I'm sorry. If I didn't say so, no, we did not notify the
6 court in Lago Agrio.

7 Q. Do you know, sir, how the Ecuadorian plaintiffs found out
8 that you filed a separate proceeding in Quito to have their
9 laboratory inspected?

10 MR. MASTRO: Your Honor, I object. He's asked him
11 about the plaintiffs found out.

12 THE COURT: Well, the answer may be, unlikely as it
13 seems, that he called them up and told them. Then he would
14 have personal knowledge.

15 MR. MASTRO: Okay.

16 THE COURT: The question is do you know, Mr. Callejas.
17 If you know, answer. If you don't know, say so.

18 THE WITNESS: I do not know how they found out about
19 our request for an inspection of the HAVOC laboratory.

20 Q. And you never called them to tell them, did you?

21 THE COURT: Already answered that question. Move on.

22 Q. Directing your attention to paragraph 40 of your written
23 testimony, sir -- I'll withdraw that, your Honor. I'll move
24 on.

25 Directing your attention to paragraph 41, sir, you

DAMLCHE5

Callejas - cross

1 state, "I recall that they also organized several
2 demonstrations outside the courthouse and subjected the
3 presiding judge at the time, Judge German Yanez, to a press
4 campaign that questioned his handling of the case and accused
5 him of bias in favor of Chevron."

6 THE COURT: Mr. Mastro, I take it you're willing to
7 agree as to the first part of the sentence about organizing
8 demonstrations that the situation is exactly the same as the
9 last time we discussed that. Is that right?

10 MR. MASTRO: I am, your Honor, yes.

11 THE COURT: Okay. Move on.

12 MR. GOMEZ: I ask that be stricken, your Honor.

13 THE COURT: No, but move on. I understand the point.
14 Q. Paragraph 42 of your written testimony Dr. Callejas, you
15 tested that the Lago Agrio plaintiffs filed a new request, this
16 time to relinquish a total of 64 inspections -- all of their
17 requested inspections that had not been scheduled yet by the
18 court.

19 And my question to you, sir, is what do you mean by
20 the phrase "all of their requested inspections"?

21 A. I referred specifically to the way it's written. In
22 Spanish, I would have said it I'm referring to all those that
23 they had requested that had not yet been carried out.

24 Q. Is it fair to say, Dr. Callejas, that when the Ecuadorian
25 plaintiffs asked for the judicial inspections to be canceled,

DAMLCHE5

Callejas - cross

1 they were only asking for inspections that they had requested
2 to be canceled and not for Chevron's judicial inspections to be
3 canceled?

4 THE COURT: I'm sorry. I think you got tied up in
5 that question in the language.

6 MR. GOMEZ: I'll try again.

7 Q. Dr. Callejas, is it fair to say that the only judicial
8 inspections that the Ecuadorian plaintiffs asked to be canceled
9 were the specific inspections that they had requested and not
10 Chevron?

11 A. Indeed, that's how it's written in my statement.

12 Q. And is it fair to say, Dr. Callejas, that at no time during
13 the Lago Agrio case did the plaintiffs ever ask that the
14 judicial inspections that Chevron wanted to conduct be
15 canceled?

16 MR. MASTRO: Again, your Honor, the record speaks for
17 itself.

18 THE COURT: Look, I don't know why we're taking the
19 time. Nobody ever said otherwise. You know, this is like I
20 don't know. It's just eating up the clock. That's what it's
21 doing.

22 MR. GOMEZ: If Chevron will stipulate.

23 THE COURT: They don't have to stipulate. They don't
24 have to stipulate there was a lawsuit in Ecuador. They don't
25 have to stipulate that you've been examining for an hour or

DAMLCHE5

Callejas - cross

1 more. They don't have to stipulate to it. It's in the record.
2 Move on.

3 MR. GOMEZ: Your Honor, the only way I can prove this
4 is if I take all numerable motions and pleadings in the Lago
5 Agrio record, have them translated and have them brought into
6 this court.

7 THE COURT: Mr. Gomez, you know that's ridiculous, or
8 at least you should. And I make due allowance to the heat of
9 the moment. Believe me, I do.

10 This generic problem came up this morning. I
11 discussed it in your presence with Mr. Friedman. At some
12 point, I think when I came back from lunch, I proposed the way
13 of dealing with that record. It seems to me that it is a
14 perfectly sensible way of dealing with that record.

15 If you are seeking to establish something that is
16 established in the record, that is, there's something there,
17 you and Chevron and Mr. Friedman can agree that it's there, and
18 if the content is necessary for me it look at, you can provide
19 me the relevant piece of paper or group of pieces of paper.

20 If on the other hand you're trying to prove the
21 negative, you can talk to your adversary and your cocounsel and
22 see if you can agree that it's not there and either you will
23 agree it's not there or somebody will say, well, it's here in
24 substance or it's really here and then you'll provide me with
25 whatever it is that underlies the claim and I'll resolve it.

DAMLCHE5

Callejas - cross

1 Nobody is saying you have to translate 216,000 pages.
2 And the idea that you're going to prove what is and isn't in
3 that record by examining witnesses about what they remember of
4 what is and isn't in 216,000 pages is just not sensible.

5 Now, the Federal Rules of Evidence give the trial
6 judge the authority to control the mode of the proof and that
7 is what I am doing. A great deal of time is being taken up to
8 no good purpose here.

9 Now, I understand part of it is because of the
10 translation, which is always frustrating for anybody in a
11 courtroom and I include myself, of course, because it's slow
12 and it's tedious and that's just the way it is. But there's a
13 lot of time being eaten up because of this insistence on
14 attempting to prove what is and isn't in the record by asking
15 people. It's just not useful and I'm not going to put up with
16 it from either side.

17 I've told you how I want it done and unless and until
18 somebody can persuade me it's not practical, that's the way
19 we're doing it.

20 MR. GOMEZ: Your Honor, if I may respond to that, the
21 witness has never indicated that he doesn't remember the
22 information necessary to answer my questions and a simple yes
23 or no answer would suffice and we can move on.

24 THE COURT: We're moving on regardless.

25 It's a matter of objective fact one way or another.

DAMLCHE5

Callejas - cross

1 I'm no more going to allow that than I'm going to have a series
2 of witnesses come in here to testify whether the wood in the
3 courtroom paneling is oak, cherry, maple or birch, as to which
4 you could probably get quite a few different answers.

5 I am, in fact, allowing the defense quite a lot of
6 latitude here.

7 Q. Sir, directing your attention to paragraph 50 of your
8 written testimony, you state, "Mr. Cabrera returned to the
9 courthouse and with the assistance of then presiding Judge
10 Yanez snatched Mr. Cabrera's request from the case file before
11 it had been hand-numbered and part of the record, thereby
12 erasing all evidence of the mentioned payment arrangement from
13 the court records."

14 What is your basis for that statement?

15 A. The basis for my statement is the report that exists in the
16 Lago Agrio record submitted under oath by the court's clerk
17 following a specific order by Judge Yanez related to our
18 request.

19 MR. GOMEZ: Your Honor, I ask this statement be
20 stricken from the testimony for lack of personal knowledge.

21 THE COURT: Mr. Mastro, why not?

22 MR. MASTRO: Your Honor, we'll be happy to submit the
23 court record in place of it.

24 THE COURT: It's stricken.

25 Now, look, a lot of this responsibility, Mr. Mastro,

DAMLCHE5

Callejas - cross

1 for this waste of time is with Chevron. You've put stuff in
2 this statement of which the witness has no personal knowledge.
3 I told you to get it out. You didn't. I'm tired of it.

4 Q. Paragraph 51, Dr. Callejas, of your written testimony, you
5 state, "Evidence uncovered later by Chevron in U.S. discovery
6 proceedings revealed that the Lago Agrio plaintiffs
7 representatives had hand-picked Mr. Cabrera to be the global
8 expert and had met with him extensively prior to his judgment."

9 Sir, what is your basis for that statement?

10 THE COURT: Are you referring to paragraph 51,
11 Mr. Gomez?

12 MR. GOMEZ: Yes.

13 THE COURT: Which sentence? I'm sorry, I see it.
14 It's the third from last sentence, right?

15 MR. GOMEZ: Yes.

16 A. I based myself mainly on outtakes from the movie Crude
17 which show engineer Cabrera meeting with the attorneys for the
18 plaintiffs in -- meeting with the Lago Agrio plaintiffs several
19 days before Mr. Cabrera was appointed by the judge hearing the
20 case.

21 In those videos I have seen Mr. Donziger and
22 Mr. Fajardo among other individuals. And, in summary,
23 Mr. Fajardo says that the attorneys and representatives for the
24 Lago Agrio plaintiffs will write the report for Mr. Cabrera and
25 that Mr. Cabrera wouldn't have to do it, to which Mr. Donziger

DAMLCHE5

Callejas - cross

1 says obviously, Richard, you have to agree to that. And
2 Mr. Richard Cabrera says, yes, I am.

3 MR. GOMEZ: Your Honor, I ask that the statement --

4 THE COURT: It's out.

5 MR. GOMEZ: Thank you.

6 THE COURT: Now we're going to take a short break here
7 and, Mr. Gomez, you and Mr. Mastro are going to go through
8 what's left of your cross vis-a-vis the statement and you're
9 going to identify to him all the points that you're going to
10 make of the nature of the last few and hopefully you will
11 resolve it and come back with an agreement and then we'll see
12 what's left to be done. But this is just inappropriate what's
13 going on here and it's the fault of both sides.

14 (Recess)

15 THE COURT: Be seated, please. If there is anybody in
16 this room with a BlackBerry, cell phone, or other such device,
17 it is forbidden and it better not be in here henceforth. There
18 is a sign and the last time I looked right in the doorway.

19 Okay. Did you resolve this stuff?

20 MR. MASTRO: Yes, your Honor. I met with Mr. Gomez.
21 Every change that he requested we have made. So hopefully that
22 expedites the examination.

23 It was our intention, and we will be doing this, to
24 take Dr. Callejas's declaration and those portions which we've
25 either agreed to withdraw further or your Honor ruled be

DAMLCHE5

Callejas - cross

1 stricken during the examination, we intended to refile a
2 corrected version to reflect your Honor's rulings and what we
3 have just agreed in a handful of instances to withdraw.

4 And we also agreed that there are two exhibits the
5 defendants want to offer that we will consent to coming into
6 evidence. They are Defendant's Exhibit 1354 and 1355. They
7 are affidavits of Alberto Racines. One dated October 16, 2009,
8 and one dated November 29, 2012, and we consent to them being
9 received in evidence.

10 THE COURT: Those two exhibits are received.

11 (Defendant's Exhibits 1354, 1355 received in evidence)

12 THE COURT: So this will be the new version of the
13 witness statement will be I guess 4300X, all right?

14 MR. MASTRO: Thank you, your Honor.

15 THE COURT: And you'll get it in tomorrow. And
16 overnight or as soon as possible you will go over all the other
17 statements with a fresh eye. There's no reason for this to go
18 on as long as it's going on. None.

19 MR. MASTRO: Understood, your Honor.

20 THE COURT: Mr. Gomez.

21 BY MR. GOMEZ:

22 Q. Dr. Callejas, you testified earlier that during the ten
23 years that you have represented Chevron in Lago Agrio case, you
24 received numerous offers from various people claiming to be
25 able to resolve the case. You referred to these as miraculous

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Callejas - cross

1 arrangements, sir.

2 THE COURT: Do you have a question.

3 Q. My question to you, sir, is in those ten years, how many
4 times did a former judge of the Lago Agrio court who had
5 actually presided over the Lago Agrio case ever offer you to
6 resolve or fix the outcome of that case?

7 A. That never happened.

8 Q. Dr. Callejas, did you inform any presiding judge in the
9 Lago Agrio case that former judge Alberto Guerra told your
10 associate he could fix the outcome of the case?

11 THE COURT: I think that comes under the heading of
12 authorities. It's been asked and answered. Let's move on.

13 Q. Did you inform the judiciary counsel --

14 THE COURT: Same ruling. Move on.

15 Q. Did you inform the bar of the Chinchu --

16 THE COURT: Move on.

17 You didn't inform anybody other than your client, is
18 that right, Mr. Callejas?

19 THE WITNESS: I informed my client. I also informed
20 the national court of justice. And another attorney for
21 Chevron, he informed other authorities in Ecuador including the
22 attorney general's office, the prosecutor general's office, the
23 judiciary council, both at the national level as well as in the
24 province of Sucumbios, the speaker of the national assembly,
25 several ministers of President Correa's cabinet, and other

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Callejas - cross

1 authorities whom I don't recall specifically right now.

2 THE COURT: This is with respect to former Judge
3 Guerra?

4 THE WITNESS: Correct, your Honor.

5 THE COURT: And when did you first do any of this?

6 THE WITNESS: That was in 2013, current year.

7 THE COURT: Mr. Gomez.

8 Q. By the time that you so informed or your associate so
9 informed the various authorities that you have listed,
10 Dr. Callejas, had Chevron already made arrangements for Judge
11 Guerra to leave Ecuador?

12 MR. MASTRO: Objection, your Honor, and it also
13 involves work product and attorney-client privilege.

14 THE COURT: Answer the question if you know,
15 Dr. Callejas, of your own knowledge.

16 THE WITNESS: I have no personal information regarding
17 this.

18 Q. And when you informed or your associates informed all of
19 these various authorities that you have listed, did you also
20 inform those authorities that Chevron was paying Alberto Guerra
21 for the evidence he would be providing in this case in the
22 United States?

23 MR. MASTRO: Objection, your Honor.

24 THE COURT: Sustained as to form.

25 Q. Dr. Callejas, when you informed the authorities that you

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Callejas - cross

1 have so described, did you also report to them that Chevron was
2 paying Alberto Guerra for the evidence that he was supplying
3 for use in this case in the United States?

4 MR. MASTRO: Objection to form, your Honor, and also
5 misstates his prior testimony.

6 THE COURT: Look, Mr. Gomez, it is almost verbatim to
7 the question I just sustained an objection to, and there's
8 certainly no material difference in the wording. Can't you
9 adhere to the rulings?

10 Q. Dr. Callejas, you personally informed the national court of
11 justice that Judge Guerra told your associate he could fix the
12 outcome of the case, correct?

13 MR. MASTRO: Objection, asked and answered and
14 misstates his prior testimony.

15 THE COURT: Well, it doesn't incorporate anything
16 about the prior testimony. It's a new question.

17 MR. MASTRO: The words personally informed.

18 THE COURT: He's asking him. Overruled.

19 A. In the filing that I submitted to the national court of
20 justice, it included as attachments affidavits by Alberto
21 Racines, by Patricio Campuzano, and myself. So, therefore, we
22 did inform the national court of justice of the overtures by
23 former Judge Guerra. Those affidavits are the same ones that
24 have been submitted in this trial before Judge Kaplan.

25 Q. Did you inform the national court of justice of the

DAMLCHE5

Callejas - cross

1 agreement between Chevron and Guerra to compensate Mr. Guerra
2 for evidence in this case?

3 MR. MASTRO: I'll let it go, your Honor.

4 A. I don't recall if --

5 THE INTERPRETER: I need to inquire.

6 A. I don't recall if the information that was mentioned
7 included information regarding payments that was made or
8 payments for belongings to Mr. -- of Mr. Guerra's.

9 Q. Dr. Callejas, did Chevron make arrangements to fly
10 Mr. Guerra out of Ecuador after he agreed to provide evidence
11 for Chevron's use in this case?

12 MR. MASTRO: Objection, your Honor. Work product,
13 attorney-client privilege.

14 THE COURT: Look, my recollection is that at or
15 shortly after the time you put in Guerra's affidavit in this
16 case months ago, you put in, in some form, what you have said
17 is complete information about what the arrangement with Guerra
18 was. Is that right?

19 MR. MASTRO: That's correct, your Honor.

20 THE COURT: And where is it? I mean where in the
21 record? It's in the record. I'd like to know where.

22 MR. MASTRO: We'll give you the exact citation, your
23 Honor. It's a question of his personal knowledge.

24 THE COURT: I understand that. Is somebody going to
25 give it to me?

DAMLCHE5

Callejas - cross

1 MR. MASTRO: They're looking it up right now, your
2 Honor.

3 THE COURT: Now, I want an offer of proof. This has
4 all been disclosed on the record. It's part of the record of
5 this case, unless there is some reason to think that there's
6 some inaccuracy. And I want to know what the good faith basis
7 is for any suggestion that there's an inaccuracy, if that's
8 what you're suggesting, and I want to know whether that's what
9 you're suggesting or whether instead this is essentially an
10 effort to repeat through this witness what Chevron has already
11 made public on the record of this case.

12 MR. GOMEZ: Your Honor, my understanding from the
13 record is that there is -- Chevron has not taken a position
14 that it has relocated Mr. Guerra to the United States. The
15 agreement is silent on who actually did that and how. My
16 recollection of asking these questions to the 30(b)(6)
17 deponent, conclusive information was not provided. And I
18 believe that this witness may or may not have knowledge as to
19 who made that decision and when and if it was done prior to
20 making the report to the national court of justice.

21 THE COURT: What is the relevance of who?

22 MR. GOMEZ: Well, your Honor, Chevron is, Chevron is
23 claiming that it has reported this act of corruption to the
24 national court of justice, while at the same time it has
25 relocated the very perpetrator of the fraud outside the reach

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Callejas - cross

1 of Ecuadorian law enforcement authorities. I want to know if
2 this witness knows if that happened before they made their
3 report to the republic.

4 THE COURT: Perhaps you recall the question I asked
5 you.

6 I'll take the lengthy silence --

7 MR. GOMEZ: Perhaps I misunderstood.

8 THE COURT: I asked you what was the relevance of who.

9 MR. GOMEZ: Of who relocated?

10 THE COURT: Of who -- you talked about who made the
11 decision. I want to know the relevance of that fact.

12 MR. GOMEZ: Well, if Chevron made the decision to
13 relocate Mr. Guerra, then Chevron is the party that has allowed
14 him to escape, that has enabled him to escape accountability in
15 his own country.

16 If Mr. Guerra of his own volition left Ecuador, then
17 Chevron is not involved in his escaping the jurisdiction of his
18 country to face for the acts that he admits he committed.
19 Unclean hands, your Honor.

20 THE COURT: Mr. Friedman.

21 MS. FRIEDMAN: Your Honor, I don't want to speak for
22 Mr. Gomez, but.

23 THE COURT: He's doing okay on his own.

24 MS. FRIEDMAN: He is. What I wanted to say is we
25 would like the line of questioning to either come in, or if the

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Callejas - cross

1 document number is found where this is disclosed, have that
2 made a part of this record because, obviously, the fact that
3 it's in the record somewhere in this case doesn't get it into
4 the trial record. So that's our, at least speaking for my
5 clients, that is what we would like to see happen.

6 THE COURT: Where is it?

7 MR. MASTRO: Your Honor, it's actually an exhibit we
8 proposed for this trial. It's 1671 and it was submitted in
9 connection with the summary judgment motion late January. I'm
10 just trying to find the citation. But we've offered it as an
11 exhibit in the case, your Honor, when understandings were
12 reached.

13 MS. FRIEDMAN: Based on that representation, your
14 Honor, we just move it into evidence and that would satisfy us
15 for now. I'll take a look at it.

16 THE COURT: What about you, Mr. Gomez?

17 MR. GOMEZ: Yes, and I can skip over to a different
18 line and move forward.

19 THE COURT: What about you, Mr. Mastro?

20 MR. MASTRO: That's fine by me, your Honor.

21 THE COURT: Okay. Fine. Plaintiff 1671 is received.

22 (Plaintiff's Exhibit 1671 received in evidence)

23 THE COURT: And that takes care of that.

24 And there should be no misunderstanding. Obviously,
25 the question of what if any inducement was given to Guerra is

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Callejas - cross

1 highly relevant. It goes to veracity. Possible economic
2 benefit to any witness in consequence of that witness's
3 testimony goes to veracity, not just Mr. Guerra, and it's
4 appropriate. All we're talking about here is how it's going to
5 come in. It's now in and counsel is moving on voluntarily.

6 Q. Dr. Callejas, Judge Leonardo Ordonez presided over the Lago
7 Agrio case from February 2010 to September 2010; is that
8 correct?

9 A. Yes, I believe those are the correct dates, Mr. Gomez.

10 Q. And you moved to have Judge Ordonez recused from the case;
11 is that correct?

12 A. Yes, that's right.

13 THE COURT: I didn't hear an answer.

14 A. Yes, that's right.

15 Q. At the time that you moved to have Judge Ordonez recused,
16 did you know that Judge Zambrano would replace him as the
17 presiding judge in the case?

18 A. We didn't know who, which judge would be the judge to
19 replace him because that is determined based on seniority. And
20 we weren't certain if at that time that was Judge Zambrano or
21 another judge on the court.

22 Q. And you never -- you never moved to recuse Judge Zambrano
23 after he replaced Judge Ordonez on or about September 2010; is
24 that correct?

25 MR. MASTRO: Again, the record speaks for itself, your

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Callejas - cross

1 Honor.

2 THE COURT: I'll take the answer as a matter of
3 convenience.

4 Q. Yes or no?

5 A. We didn't do so because no causes, none of the few causes
6 that are available at law for a recusal had taken place at that
7 time.

8 Q. Sir, you represented Chevron corporation in Ecuador for
9 over ten years and before that you were the attorney for
10 Texaco; is that correct?

11 A. Yes, that's correct.

12 Q. For about how many years did you represent Texaco in
13 Ecuador?

14 A. I was an in-house of employee of Texaco for approximately
15 15 years, and afterwards represented Texaco for some five or
16 six years additionally, but not continuously.

17 Q. And during all that time, sir, that you represented Chevron
18 and Texaco, has anyone physically harmed you because you were
19 their representative?

20 A. No. No person has caused me physical harm.

21 Q. During all the time that you were Chevron and Texaco's
22 attorney, has anyone physically harmed a member of your family
23 because of your representation of these companies?

24 A. No, they have not.

25 Q. During all this time that you've represented Chevron and

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Callejas - cross

1 Texaco, has anyone directly threatened you for being their
2 representative?

3 A. Yes. They have done so going so far as to qualify us as
4 traitors of the country and corrupt, which is a harm that is
5 more serious than a physical harm because it has affected --
6 because it affects my honor and my reputation.

7 Q. So you're referring to -- what are you referring to? How
8 were those threats directed to you?

9 A. Constantly those of us who have defended Texaco have been
10 referred to as corrupt, traitors, and those who would sell out
11 their fatherland.

12 I have seen videos of demonstrations in which there is
13 an incitement to violence and hate against my person and other
14 Chevron employees, including protests called by the
15 representatives of the plaintiffs in Lago Agrio through press
16 bulletins.

17 In those demonstrations, there have been images of my
18 person paraded through the streets of Lago Agrio, images of me
19 as a prisoner, and images or effigies of Mr. Veiga, Mr. Perez,
20 Mr. Jim Craig and the CEO of Chevron at the time, Mr. O'Brien
21 or Mr. O'Reilly.

22 Those images, after being paraded through the streets
23 of Lago Agrio, even the street facing the courthouse or in
24 front of the courthouse, were grotesquely handed over to
25 someone dressed as an image of death. And this character who

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Callejas - cross

1 had in his hands a gigantic sickle carried out the action of
2 cutting the head off each of those effigies and then placed
3 them in a coffin.

4 If that's not an incitement to violence, to personal
5 violence and hate, I can't imagine what it would be.

6 Q. Sir, did you report that conduct to the police in Ecuador?

7 A. No, I did not.

8 Q. Did you ever file a complaint against any of the persons
9 you believed were responsible for that conduct that you just
10 described?

11 A. I did not. But I took it very seriously and it had a
12 serious effect on my personal and professional life.

13 (Continued on next page)

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DAM8CHE6

1 MR. GOMEZ: I have nothing further at this time.

2 THE COURT: Thank you.

3 Mr. Mastro.

4 MR. MASTRO: I have no further questions for
5 Dr. Callejas.

6 THE COURT: Dr. Callejas, you are excused.

7 (Witness excused)

8 MR. MASTRO: Your Honor, just so the record is
9 complete, the understandings of Mr. Guerra were submitted. It
10 is docket entry 755-14. It was Exhibit 3268 to the Stavers
11 declaration. I believe that was filed in late January 2013.
12 And that is PX 1671, your Honor.

13 THE COURT: And to those interested, that is
14 available, I gather, on a public kiosk in the clerk's office,
15 and I am sure elsewhere. It is available on the Internet.

16 Next witness, please.

17 MR. MASTRO: Certainly, your Honor.

18 Chevron calls Troy Dahlberg, and he will be examined
19 by my partner, Georgia Winston.

20 TROY DAHLBERG,

21 called as a witness by the plaintiff,

22 having been duly sworn, testified as follows:

23 THE DEPUTY CLERK: State your name and spell your last
24 name for the record.

25 THE WITNESS: Troy Dahlberg, D-A-H-L-B-E-R-G.

DAM8CHE6

1 THE COURT: You may proceed, Ms. Winston.

2 MS. WINSTON: May I approach the witness?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MS. WINSTON:

6 Q. Mr. Dahlberg, do you have Plaintiff's Exhibit 4900 in front
7 of you?

8 A. Yes.

9 Q. Do you recognize that document?

10 A. I do.

11 Q. What is it?

12 A. It's my direct testimony.

13 Q. Can you turn to the last page?

14 A. I have it.

15 Q. Is that your signature on the last page?

16 A. It is.

17 Q. At the time you signed your declaration, were your
18 statements true and accurate?

19 A. Yes.

20 Q. When was the last time you reviewed your testimony?

21 A. Earlier today.

22 Q. Have you made any changes since you signed your direct
23 testimony?

24 A. There were a couple of adjustments, yes.

25 Q. Are there corrections you make to paragraph 7, 30, 116,

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Dahlberg - direct

1 117, 118 and 137?

2 A. Yes.

3 Q. Did you initial each of the changes in your direct
4 testimony?

5 A. I did.

6 Q. Do you consider any of the changes you made to be
7 substantive?

8 A. No.

9 Q. As corrected, is your declaration true and accurate today?

10 A. It is.

11 MS. WINSTON: We move to ask Mr. Dahlberg a few
12 additional questions regarding a recent production of documents
13 made by Andrew Woods. The documents were produced after Mr.
14 Dahlberg had signed his direct testimony so he couldn't
15 incorporate that information.

16 THE COURT: Are you offering 4900?

17 MS. WINSTON: Yes.

18 THE COURT: Received on the same basis as the other
19 statements.

20 (Plaintiff's Exhibit 4900 received in evidence)

21 THE COURT: Now, are there exhibits incorporated in it
22 that you are offering?

23 MS. WINSTON: We also move to offer the exhibits
24 listed at 4900A.

25 THE COURT: Received on the same basis as the others.

DAM8CHE6

Dahlberg - direct

1 (Plaintiff's Exhibit 4900A received in evidence)

2 THE COURT: Is there any objection to the proposed
3 supplementary direct?

4 MR. FRIEDMAN: If I could just get direction to what
5 additional documents and where they are that the witness is
6 relying upon for the new direct testimony.

7 MS. WINSTON: The documents are Bates stamped WDS
8 008803 to WDS 009329, and they were produced on October 10 by
9 Stuart Gross, counsel for Andrew Woods, and I have about three
10 questions.

11 MR. FRIEDMAN: I would object to that. I did not see
12 those documents. I guess I could have, but I did not see that
13 they were going to be part of this examination, so I am not
14 familiar with what they are.

15 THE COURT: When were they produced, by whom, to whom?

16 MS. WINSTON: They were produced on October 10 to
17 Gibson, Dunn & Crutcher, to Mr. Donziger and Mr. Gomez, by
18 counsel for Andrew Woods, Stuart Gross.

19 THE COURT: Mr. Friedman, check with your client. Is
20 that right?

21 MR. FRIEDMAN: I will take it as being right. What I
22 am saying is the connection to somebody saying these documents
23 are going to be used with this witness was never made for us.
24 So a lot of documents come in, but we were not informed it was
25 going to be part of the presentation today.

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Dahlberg - direct

1 MS. WINSTON: If I may clarify. The documents aren't
2 being offered into evidence. They are just additional
3 materials relevant to Mr. Dahlberg's testimony. I just want to
4 clarify for the record whether they had any impact on his
5 written testimony.

6 MR. FRIEDMAN: If it's a yes or no, they did or they
7 didn't, that's OK. If the answer is yes and it's going to
8 be --

9 THE COURT: If the answer is no, we don't have an
10 issue. Let's find out what the answer is.

11 MS. WINSTON: May I proceed?

12 THE COURT: Go ahead.

13 BY MS. WINSTON:

14 Q. Mr. Dahlberg, since signing your direct testimony, have you
15 received any additional documents relating to the subject
16 matter of that testimony?

17 A. Yes.

18 Q. Would you please briefly describe those documents?

19 A. The documents were primarily related to requests that Mr.
20 Donziger had made to magistrate law for reimbursement for
21 expenses that he had incurred related to the litigation, and
22 there were a handful of documents that related to the Kaplan
23 firm, and some requests by Mr. Donziger.

24 Q. Just to clarify, when you said magistrate law, is that
25 magister law?

DAM8CHE6

Dahlberg - direct

1 A. Magister law. Excuse me.

2 THE COURT: I didn't understand the words. What are
3 the words?

4 MS. WINSTON: Magister law.

5 THE COURT: Magister law?

6 MS. WINSTON: Yes.

7 Q. Do any of the documents you recently received affect the
8 conclusions set forth in your written direct testimony?

9 A. They do not. The opinions that I have stay the same.

10 THE COURT: OK. Mr. Friedman.

11 MR. FRIEDMAN: Thank you.

12 THE COURT: Anything else?

13 MS. WINSTON: No, your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRIEDMAN:

16 Q. My name is Rick Friedman, and I represent the Donziger
17 defendants. How do you do?

18 A. I am fine.

19 Q. I first wanted to ask you, did anything that you reviewed
20 indicate any direct payments to a Judge Zambrano in Ecuador?

21 A. No.

22 Q. Anything you reviewed indicate any direct payments to a
23 Mr. Guerra in Ecuador?

24 A. Yes.

25 Q. What was that?

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Dahlberg - cross

1 A. I think it was either a declaration or deposition that
2 Mr. Guerra had.

3 Q. I meant financial documents.

4 A. There were some financial documents that were exhibits to
5 the declaration that he claimed represented the payments.

6 Q. Any independent documents?

7 Let me start over. Any documents independent of
8 Mr. Guerra that reflected payments to him?

9 A. Other than the ones I mentioned, no.

10 Q. If you could turn to page 34 of your testimony. In
11 paragraph 57, the first sentence, I want to make sure that I am
12 understanding what you're saying here.

13 Are you saying that all disbursements that you
14 reviewed fall into this category or these categories that you
15 described in the first sentence?

16 A. For the most part. There is a small number that weren't
17 included in this, but it does reflect almost all of the
18 financial transaction information that I saw.

19 Q. You stress throughout your report that you had incomplete
20 information, and I am not going to ask you to go through the
21 whole report again, but, generally speaking, could you tell me
22 what the major categories of incomplete information were?

23 A. So as it relates to the financial and accounting records
24 that I reviewed and business records, major categories were
25 anything that would sort of be summarizing distributions,

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Dahlberg - cross

1 disbursements. So things like a checkbook, or maybe an
2 accounting system with a general ledger, something like a
3 Quicken's book type of thing, some summary of moneys coming in,
4 moneys being received, investment funds received, sort of your
5 kind of basic accounting records that you would expect where
6 you would maybe have authorizations for a transaction and then
7 you have supporting records for that transaction, such as maybe
8 an invoice, and you might have an e-mail requesting approval
9 for something with the invoice, so something directing someone
10 to actually pay for the invoice. Then reconciliations back to
11 bank statements that would maybe show either moneys coming in
12 or moneys going out. Bank reconciliations so that you would
13 know if you were actually tying out to your accounts. Sort of
14 classic normal records that I have seen throughout the course
15 of my professional career.

16 Q. Would it be fair to say that you did see some of those
17 things, but you didn't see a uniform system that would allow
18 you to reconcile payments in and payments out and where they
19 went?

20 A. Actually, I saw no evidence of a structure of a financial
21 or accounting record keeping. Basic things like a checkbook or
22 something like that, nothing like that, or sort of a
23 disbursements journal. And this relates to Mr. Donziger now.
24 There were other people where I saw some records that they
25 maintained, other entities. But as far as for Mr. Donziger was

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1 concerned, I saw nothing that looked like it was keeping track
2 on a summarized basis of the transactions, accounting or
3 financial activities that were really going on.

4 Q. So you did see, for example, you used the example of
5 checkbooks. Did you see some checkbooks for some entities?

6 A. No, I never saw checkbooks from anybody.

7 Q. You made reference just a moment ago to seeing some of the
8 sort of things like -- I forget the term you used -- books,
9 sort of standard accounting documents.

10 A. Correct. There was evidence of that.

11 Q. But not as to Mr. Donziger himself is what you're saying?

12 A. That is correct. I saw no evidence of that with Mr.
13 Donziger.

14 Q. Typically, when you look at a business or enterprise, there
15 is a uniform system of accounting that's applied, sort of a
16 standard, customary set of materials you're used to seeing, is
17 that what you're trying to convey?

18 A. Basically, with any kind of organization that has any kind
19 of a financial -- sort of conducts financial activity, it could
20 even be individuals, small businesses, nonprofits, whatever,
21 something that kind of comes out of making sure that people can
22 figure out what transactions occur, what documentation relates
23 to the transactions, some way to accumulate transactions so
24 that you know how much moneys were spent in specific areas for
25 specific vendors, being able to reconcile back, all of those

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1 kind of things that for a normal business, maybe like a general
2 ledger or financial statements on a higher level, and would
3 allow you to track in and be able to reconcile the activities
4 in the operations. I didn't see anything like that for Mr.
5 Donziger.

6 Q. So, for example, Mr. Kohn's law firm, you saw some
7 financial documents relating to that?

8 A. I did.

9 Q. I doubt you were given the opportunity, but if you were
10 given the opportunity to go to his law firm as an accountant
11 and look at all his financial records, you would expect to see
12 the sort of things you were just describing?

13 A. Actually, I have done work for law firms before, and they
14 keep books and records so they can bill their clients and know
15 what they are revenues are and that kind of thing. So, yes,
16 law firms typically do keep those type of records in my
17 experience.

18 Q. And there were several, maybe even many different
19 businesses whose records you looked at in this case. I am
20 thinking like the Kohn law firm, Crude, Inc. We can go through
21 the list, but there are a variety of entities that you looked
22 at.

23 A. Not actually in the sense where I got to see all the
24 records from that particular business. I got to sort of see
25 them through, I guess, productions through Mr. Donziger and

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1 maybe associates of his law firm. But I never understood that
2 I got all the records or books for the Kohn firm or really for
3 any other entity except for Mr. Donziger.

4 Q. If I understand what you're saying, in this case, you
5 didn't see a uniform system of financial accounting like you
6 would expect to see in an ordinary enterprise?

7 A. I would say almost any type of enterprise. I think
8 individuals might keep better records personally than what I
9 saw for this.

10 Q. So you're not expressing the opinion, for example, that the
11 Kohn law firm has inadequate records, in the way that they keep
12 their financial records?

13 A. I didn't express that opinion, no.

14 Q. You're not expressing the opinion that Crude, Inc., I think
15 is the name of the corporation, is keeping inadequate records?

16 A. No. I didn't express that opinion.

17 Q. What you're telling us is -- well, I think that's clear.
18 Thank you.

19 If you would look at page 3 of your report, and I
20 guess I should ask you, Mr. Dahlberg, did you write up your
21 direct testimony?

22 A. I did.

23 Q. What we are reading here are your words?

24 A. Yes.

25 Q. If we look under Ecuadorian counsel, where you say that

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1 there were payments of approximately 684,000 to individuals or
2 entities primarily working at Donziger's direction, what is
3 your basis for determining that these counsel were working
4 primarily at Donziger's direction?

5 A. So during the course of my work, we looked at thousands and
6 thousands of documents, and the scope of the documents were
7 e-mails, various types of correspondence, retainer agreements,
8 all sorts of business types of records. And so what I am
9 expressing here is for any dollar amounts that we entered in
10 the report, we saw actual business operational documentation to
11 let us understand what those dollars related to.

12 Q. I am not sure I am understanding what you're saying. Are
13 you saying that you reviewed documents where Mr. Donziger is
14 giving orders to the Ecuadorian lawyers about how they should
15 conduct activities in Ecuador?

16 A. Yes.

17 Q. What sort of activities was he directing?

18 A. I think, basically, it was more direction about
19 expenditures. So, in other words, money getting expended for,
20 you need \$50,000 to Selva Viva or \$60,000 for Frente or
21 something like that. Those are the types of things that I saw
22 that Mr. Donziger was directing flows of funds.

23 Q. I see. So would it be fair to say he was facilitating the
24 flow of funds? I am not trying to parse words with you, but
25 trying to understand your meaning about directing.

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1 A. So in the documents I saw, it was more of, I would say, a
2 firm sort of statement like, send money to. He would say that
3 to the Kohn firm. Send \$50,000 to Frente to Mr. Yanza, or
4 something like that. So it wasn't like a request, like if you
5 feel like it send the \$50,000. It was like, you know, can you
6 please send it, there is a need to. And he may express like
7 Mr. Cabrera or something like that he would designate the
8 reason why the funds needed to be sent.

9 Q. If I am understanding you correctly, you were not in the
10 main reviewing documents that indicated that he was controlling
11 what the Ecuadorian lawyers were doing, other than as to
12 getting them money, if you will?

13 A. Yeah. I don't remember seeing documents that were
14 directing how the day-to-day activities for the Frente or Selva
15 Viva were expending funds that Mr. Donziger was directing.

16 Q. If we go to where it says experts and consultants, would
17 the same thing be true, that when you use the phrase Donziger's
18 direction to provide scientific or technical services in the
19 litigation, is that a money based direction again, or are you
20 talking about specific direction to experts and consultants to
21 do particular types of work?

22 A. So the direction would be that 50,000 or 40,000 is needed
23 to pay for these technical services so they can be done.

24 THE COURT: We will break right here because I have
25 another case that I have to attend to.

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1 Give me an estimate of how long the cross of this
2 witness is going to take, please.

3 MR. FRIEDMAN: I would say an hour, your Honor.

4 THE COURT: Mr. Gomez.

5 MR. GOMEZ: Maybe 15 minutes, your Honor.

6 THE COURT: Thank you. And the next witness will be?

7 MR. MASTRO: The next witness will be former Chief
8 Justice Spigelman.

9 THE COURT: I'm sorry?

10 MR. MASTRO: James Spigelman, your Honor. And then
11 Mr. Guerra.

12 THE COURT: How long will you be taking with
13 Mr. Spigelman, Mr. Friedman, Mr. Gomez?

14 MR. BOOTH: I would expect less than an hour.

15 MR. GOMEZ: I don't expect very much at all.

16 THE COURT: So we should reach Mr. Guerra before lunch
17 or about lunchtime, is that right?

18 MR. FRIEDMAN: I think that's correct.

19 THE COURT: Fine. I will see you tomorrow morning at
20 9:30, folks. Thank you.

21 (Adjourned to October 23, 2013, at 9:30 a.m.)
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